

**Vestavia Hills
City Council Agenda
March 14, 2016
5:00 PM**

1. Call to Order
2. Roll Call
3. Invocation – Mary Elliott, Parks and Recreation Foundation Board Treasurer
4. Pledge Of Allegiance
5. Announcements and Guest Recognition
6. City Manager’s Report
7. Councilors’ Reports
8. Approval of Minutes – February 17, 2016 (Work Session) And February 22, 2016 (Regular Meeting)

Old Business

9. Resolution Number 4803 – A Resolution Authorizing the City Manager To Hire 3 New Police Officers And 3 New Firefighters/Paramedics
10. Resolution Number 4804 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An (MOU) Agreement With Jefferson County For Storm Debris Removal From Devastating Storms Which May Occur In The City Of Vestavia Hills, Alabama
11. Ordinance Number 2647 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver An Agreement For Cost Sharing For The Grants Mill Road Corridor Study
12. Resolution Number 4805 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Sain Associates For Professional Traffic Engineering Services Associated With A Corridor Study Of A Defined Segment Of Dolly Ridge Road From E.A. Hollis Drive To Pump House Road/Cahaba Heights Road

New Business

13. Resolution Number 4807 – A Resolution Declaring Certain Personal Property As Surplus And Directing The Sale/Disposal Of Said Property
14. Resolution Number 4809 – A Resolution Authorizing The Mayor And City Manager To Enter Into An Agreement With Holcombe Norton Partners, Inc. For Architectural Services For Sicard Hollow Athletic Complex Park Improvements

New Business (Requesting Unanimous Consent)

15. Resolution 4808 – A Resolution Authorizing A Special Economic Development Agreement By The City Of Vestavia Hills, Alabama And SCP At Liberty Park, LLC
16. Ordinance 2650 – An Ordinance Authorizing The Settlement Of A Lawsuit

First Reading (No Action Taken At This Meeting)

17. Ordinance Number 2648 – Conditional Use - 854 Vestlake Ridge Drive, Use For A Home Office For A Consulting Business; James Sumner, Jr., Owner
18. Ordinance Number 2649 – Rezoning – 2834 and 2838 Acton Place; Rezone From Jefferson County A to Vestavia Hills A; Compatible Zoning; Gail Acton, Owner
19. Resolution Number 4810 – A Resolution Approving Funding And Purchasing For Two Vehicles For The Police Department
20. Citizens Comments
21. Motion For Adjournment

CITY OF VESTAVIA HILLS

CITY COUNCIL

WORK SESSION

MINUTES

FEBRUARY 17, 2016

The City Council of Vestavia Hills met in a special work session on this date at 7:30 AM following posting/publishing pursuant to Alabama law. The Mayor called the work session to order and the Clerk checked the roll with the following:

MEMBERS PRESENT:

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

The following applicants each interviewed with the Council beginning at 7:30 AM: (1) Jonathan K. Vickers; (2) David Powell; (3) Pat Dewees; (4) Lloyd Peeples; (5) Lisa Baker; (6) Janell M. Ahnert; (7) Allison Maners; (8) Thomas W. Parchman; (9) Kimberly B. Cook; (10) Celia C. Anthony; (11) Steve Bendall; (12) Chirayu "Charlie" Shah; and (13) Jeffrey Dugas.

The interviews lasted throughout the day and following the interviews, the Council discussed the qualifications of the applicants and the day's interviews.

Work session adjourned at 4:30 PM.

Alberto C. Zaragoza, Jr.
Mayor

Attested by:

Rebecca Leavings
City Clerk

CITY OF VESTAVIA HILLS

CITY COUNCIL

MINUTES

FEBRUARY 22, 2016

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, Treasurer
George Sawaya, Deputy Treasurer
Dan Rary, Police Chief
Jim St. John, Fire Chief
Terry Ray, Deputy Fire Chief
Brian Davis, Public Services Director
Christopher Brady, City Engineer

Invocation was given by Donald Harwell, Vestavia Hills resident, followed by the Pledge of Allegiance.

ANNOUNCEMENTS, GUEST RECOGNITION, CANDIDATES

- Mr. Henley welcomed Dr. Sheila Phillips, Superintendent of Education.
- Mr. Henley announced that Vestavia Hills We The People has won its 11th straight competition and will be attending the nationals in Washington DC. He wished them luck in their competition.
- Mr. Pierce thanked the Chamber Board for their service to the City and welcomed Chamber member Roger Stewart to the meeting.
- Mr. Ammons congratulated the Vestavia Hills wrestling team for a win at the most recent tournament.

CITY MANAGER'S REPORT

- Mr. Downes stated that the resurfacing of Sicard Hollow Road is a multi-jurisdictional project will be done following some geotechnical work and bidding it by summer.
- Bids for the next phase of SHAC are due on March 9, 2016 and the City is hopeful that a number of bidders will bid on the project.
- Mr. Boone and Mr. Monk have been working with the developers of the new project at Wald Park for a purchase contract and an agreement should be forthcoming.
- Mr. Downes stated that Tim Holcomb, Deputy Police Chief, is retiring and will be missed within the department, as well as his services to the City. Mr. Davis stated that Eugene Mallory of Public Works will be retiring after 34 years of service.

COUNCILORS' REPORTS

- The Mayor presented three proclamations. Mr. Downes read the proclamations and the Council presented them as follows.
 - National Girl Scout Cookie Week – the week of February 26-28, 2016. This Proclamation was presented to the following Girl Scouts: Tessa Leggett, Troop 30232; Emma Leggett, Troop 30796; Ellie Johnson, Troop 30688; Abigail Hanson, Troop 30172; and Emi Lovell, Troop 30552.
- Developmental Disabilities Awareness Month, March 2016. This Proclamation was presented to Ashton Johnson.
- Autoimmune Diseases Awareness Month – March 2016. This Proclamation was presented to Debra Wood.
- Mr. Ammons welcomed Tommy Coggin, Immediate Past President of the Park Board and member of the Foundation.

FINANCIAL REPORTS

Mr. Turner presented the financial reports for month ending January 2016. He read and explained the balances.

The Mayor pointed out that the City was at 100% of collections of ad valorem for the budget. Mr. Downes stated that sales tax collections are also above projections.

APPROVAL OF MINUTES

The minutes of January 28-29, 2016 (Work Session) and February 8, 2016 (Regular Meeting) were presented for approval.

MOTION Motion to dispense with the reading of the minutes of January 28, 2016 (Work Session) and approve them as presented was by Mr. Pierce and second by Mr. Henley. Roll call vote as follows:

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

MOTION Motion to dispense with the reading of the minutes of January 29, 2016 (Work Session) and February 8, 2016 (Regular Meeting)and approve them as presented was by Mr. Henley and second by Mr. Sharp. Roll call vote as follows:

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

MOTION Motion to dispense with the reading of the minutes of February 8, 2016 (Regular Meeting)and approve them as presented was by Mr. Pierce and second by Mr. Ammons. Roll call vote as follows:

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

OLD BUSINESS

ORDINANCE NUMBER 2630

Ordinance Number 2630 – Annexation – 90-Day Final – 1724 Vestaview Lane, Charles Farrell, III, Owner (Public Hearing)

MOTION Motion to approve Ordinance Number 2630 was by Mr. Pierce and second was by Mr. Henley.

Mr. Pierce explained that this is the 90-day finalization of the annexation of this property.

Mr. Brady stated that the drainage pipe on the property showed no problems.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2631

Ordinance Number 2631 – Rezoning – 1724 Vestaview Lane; Rezone From Jefferson County R-1 To Vestavia Hills R-2; Compatible Zoning For Annexation; Charles Farrell, III, Owner (*Public Hearing*)

MOTION Motion to approve Ordinance Number 2631 was by Mr. Sharp and second was by Mr. Henley.

Mr. Downes stated that is the compatible rezoning of the property just annexed.

Mr. Sharp stated that the approval was unanimously recommended by the Planning and Zoning Commission.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2632

Ordinance Number 2632 – Annexation – 90-Day Final – 2738 Rocky Ridge Road; Cameron Eaton And Tison Barganier (*Public Hearing*)

MOTION Motion to approve Ordinance Number 2632 was by Mr. Pierce and second was by Mr. Ammons.

Mr. Pierce stated that this is the 90-day final annexation of a portion of a property for eventual development of 4 residential lots.

Mr. Brady stated that they have worked with the developers and found no problems.

Cameron Eaton was present in regard to this request.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2633

Ordinance Number 2633 – Rezoning – 2739 Rocky Ridge Road; Rezone From Jefferson County E-2 To Vestavia Hills R-1; Compatible Zoning For Annexation With A 40’ Front Setback Similar To Adjacent Developments; Cameron Eaton And Tison Barganier, Owners (*Public Hearing*)

MOTION Motion to approve Ordinance Number 2633 was by Mr. Pierce and second was by Mr. Henley.

Mr. Sharp stated that the Commission approved this unanimously.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2634

Ordinance Number 2634 – An Ordinance To Amend Section 12-1 Of The Vestavia Hills Code Of Ordinances Entitled “Wald Park” And Amending Ordinance Number 2255 Section 1 Entitled “Park Rules And Regulations” To Establish Amended Rules, Regulations And Hours Of Operation For Wald Park (*Public Hearing*)

MOTION Motion to approve Ordinance Number 2634 was by Mr. Ammons and second was by Mr. Pierce.

The Mayor asked that the discussion of items 14-21 be combined into a single discussion and asked that the Public Services Director, Brian Davis, to explain the changes and updates needed within the Ordinances. He explained that the State of Alabama regulates the carrying of firearms and any regulations need to be removed. He stated that some of the parks need to be officially named and explained an alcohol procedure for each park that was proposed within the Ordinance.

Mr. Ammons stated that this has been approved by the Vestavia Hills Park and Recreation Board.

Mr. Henley asked how long the alcohol policy has been at Wald Park. Discussion ensued concerning events with alcohol involved. Mr. Davis stated that a police presence is required.

Discussion ensued as to the carrying of firearms within the City parks. Mr. Boone explained. Mr. Downes indicated that he received an anonymous letter questioning the ability to carry firearms in his office which was quickly followed up by Counsel.

Mr. Coggin stated that they did research these changes and recommended approval.

The Mayor opened the floor for a public hearing.

David Harwell, 1803 Catala Road, stated that the hours of operation were specific and some are not as specific. He asked the reasoning of this difference.

Mr. Davis stated that the programmable parks have set hours because of maintenance. The neighborhood pocket parks are not scheduled and it's better to just regulate by daylight hours.

Donald Harwell, 1357 Willoughby Road, asked about the alcohol in the parks.

Mr. Davis stated that it will be standard in all parks.

There being no one else to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2635

Ordinance Number 2635 – An Ordinance To Amend Section 12-2, Vestavia Hills Code Of Ordinances, Republished 2015 Entitled “Liberty Park Sports Complex” And Section 1 Of Ordinance Number 2256 Entitled “Park Rules And Regulations”, To Amend Hours Of Operation, Rules And Regulations For Liberty Park Sports Complex (*Public Hearing*)

MOTION Motion to approve Ordinance Number 2635 was by Mr. Ammons and second was by Mr. Henley.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2636

Ordinance Number 2636 – An Ordinance To Amend Section 12-3 Of The Vestavia Hills Code Of Ordinances Republished 2015 Entitled “Little Shades Creek Park” And To Amend Section 2 Of Ordinance Number 2178 Entitled “Park Rules And Regulations”, To Amend Regulation Of The Hours Of Operation, Rules And Regulations For McCallum Park (Public Hearing)

MOTION Motion to approve Ordinance Number 2636 was by Mr. Ammons and second was by Mr. Sharp.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2637

Ordinance Number 2637 – An Ordinance To Amend Section 12-4 Of The Vestavia Hills Code Of Ordinances Republished 2015 Entitled “Vestavia Hills Athletic Complex Cahaba Heights” And To Amend Section 1 Of Ordinance Number 2257 Entitled “Park Rules And Regulations” To Amend Regulation Of The Hours Of Operation, Rules And Regulations For Vestavia Hills Athletic Complex Cahaba Heights (Public Hearing)

MOTION Motion to approve Ordinance Number 2637 was by Mr. Ammons and second was by Mr. Henley.

The Mayor opened the floor for a public hearing.

Missy Turner, 3295 Glendale Road asked about the proposed hours of the field, the defined areas of the park and the ability to use batting cages.

Mr. Davis explained.

There being no one else to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2638

Ordinance Number 2638 – An Ordinance To Amend Section 12-5 Of The Vestavia Hills Code Of Ordinances Republished 2015 Entitled “Byrd Park” And To Amend Section 1 Of Ordinance Number 2180 Entitled “Park Rules And Regulations” For Amended Regulation Of The Hours Of Operation, Rules And Regulations For Byrd Park (*Public Hearing*)

MOTION Motion to approve Ordinance Number 2638 was by Mr. Ammons and second was by Mr. Sharp.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2639

Ordinance Number 2639 – An Ordinance To Amend Section 12-6 Vestavia Hills Code Of Ordinances Entitled “Shallowford Park” And Amend Section 1 Of Ordinance Number 2181 Entitled “Park Rules And Regulations” To Amend The Hours Of Operation, Rules And Regulations For Shallowford Park (*Public Hearing*)

MOTION Motion to approve Ordinance Number 2639 was by Mr. Ammons and second was by Mr. Pierce.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2640

Ordinance Number 2640 – An Ordinance Naming The Sicard Hollow Athletic Complex, Regulating The Hours Of Operation, And Establishing Rules And Regulations For Said Park (*Public Hearing*)

MOTION Motion to approve Ordinance Number 2640 was by Mr. Ammons and second was by Mr. Henley.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2641

Ordinance Number 2641 – An Ordinance Naming The Meadowlawn Park, Regulating The Hours Of Operation, And Establishing Rules And Regulations For Said Park (*Public Hearing*)

MOTION Motion to approve Ordinance Number 2641 was by Mr. Sharp and second was by Mr. Pierce.

Mr. Davis explained the proposed location for this particular park.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 4794

Resolution Number 4794 - Annexation – 90-Day – 3425 Jones Drive; Estate of Millie Weaver, Owner (*Public Hearing*)

The Mayor asked that the annexation discussions be combined for the sake of discussion.

Mr. Henley stated that the Committee reviewed each request and found no adverse information.

MOTION Motion to approve Resolution Number 4794 was by Mr. Henley and second was by Mr. Pierce.

The Mayor opened the floor for a public hearing.

Ralph McColl, 3700 Altadena Circle, stated that this is the estate of his mother-in-law and they wished to fix up the home and live there.

There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2641

Ordinance Number 2642 - Annexation – Overnight – 3425 Jones Drive, Estate of Millie Weaver, Owner (*Public Hearing*)

MOTION Motion to approve Ordinance Number 2642 was by Mr. Henley and second was by Mr. Ammons.

The Mayor stated that this is the overnight annexation of the same property.

Ms. Leavings stated that all fire dues and voluntary annexation contributions are paid on all properties.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 4795

Resolution Number 4795 – Annexation – 90-Day – 2510 and 2512 Dolly Ridge Road, Lots 21 & 22, Dolly Ridge Estates; Don and Kristie Garrett and Todd and Leeba Strong, Owners (*Public Hearing*)

MOTION Motion to approve Resolution Number 4795 was by Mr. Henley and second was by Mr. Ammons.

Mr. Strong and Mr. Garrett were present in regard to the request.

Mr. Henley pointed out this property consists of 2 lots and will have 2 homes constructed.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2643

Ordinance Number 2643 – Annexation – Overnight – 2510 and 2512 Dolly Ridge Road, Lots 21 & 22, Dolly Ridge Estates; Don and Kristie Garrett and Todd and Leeba Strong, Owners (*Public Hearing*)

MOTION Motion to approve Ordinance Number 2643 was by Mr. Henley and second was by Mr. Pierce.

The Mayor stated that is the overnight annexation of the same property.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 4796

Resolution Number 4796 – Annexation – 90-Day – 2611 Alta Vista Circle, Lot 7, Altadena Valley Country Club Sector; Chad Speegle, Owner (*Public Hearing*)

MOTION Motion to approve Resolution Number 4796 was by Mr. Henley and second was by Mr. Ammons.

Chad Speegle was present in regard to this request.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2644

Ordinance Number 2644 – Annexation – Overnight – 2611 Alta Vista Circle, Lot 7, Altadena Valley Country Club Sector, Chad Speegle, Owner (*Public Hearing*)

MOTION Motion to approve Ordinance Number 2644 was by Mr. Henley and second was by Mr. Pierce.

The Mayor stated this is the overnight annexation of the same property.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 4797

Resolution Number 4797 – Annexation – 90-Day – 2425 Kenvil Circle; Lot 37, Resurvey of Lots 18-20, 33-37 & 46-48, Buckhead, 2nd Sector; Anna and Brandon Rooks, Owners (*Public Hearing*)

MOTION Motion to approve Resolution Number 4797 was by Mr. Henley and second was by Mr. Sharp.

Mr. Rooks was present in regard to the request.

Discussion ensued as to the lack of curb/gutter on the street.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

ORDINANCE NUMBER 2645

Ordinance Number 2645 – Annexation – Overnight – 2425 Kenvil Circle; Lot 37, Resurvey of Lots 18-20, 33-37 & 46-48, Buckhead, 2nd Sector; Anna and Brandon Rooks, Owners (*Public Hearing*)

MOTION Motion to approve Ordinance Number 2645 was by Mr. Henley and second was by Mr. Pierce.

The Mayor stated that this is the overnight annexation of the same property.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 4798

Resolution Number 4798 – Annexation – 90-Day – 4705 Caldwell Mill Road; David Acton Building Corporation, Owners (*Public Hearing*)

MOTION Motion to approve Resolution Number 4798 was by Mr. Henley and second was by Mr. Sharp.

Jordan Huffstedler, David Acton Building Corporation, was present in regard to this request.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

NEW BUSINESS

RESOLUTION NUMBER 4800

Resolution Number 4800 – A Resolution Appointing a Member to the Vestavia Hills Board of Education to Fill the Unexpired Term of Shera Grant

MOTION Motion to approve Resolution Number 4800 was by Mr. Henley and second was by Mr. Pierce.

Mr. Henley stated that he recommends amending Res 4800 to appoint David Powell to the Board.

MOTION Motion to amend Res 4800 was by Mr. Ammons and second was by Mr. Pierce.

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

The Mayor stated that the Council interviewed 13 outstanding applicants for this appointment and the Council had to make a decision on one. He stated that he encouraged everyone to apply again if he wasn't selected. This community has a wealth of volunteers and sometimes it takes more than one time to apply and become the selected appointment. He applauded everyone for applying. The Council will once again open the application process and if an applicant who applied this time wants to re-apply he can do so and even interview again or let the other interview stand and be considered.

The Mayor called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 4801

Resolution Number 4801 – A Resolution Authorizing Alabama Department Of Transportation Access For Improvements For TOPICS Phase VIII STPBH-9802(88) Green Valley

MOTION Motion to approve Resolution Number 4801 was by Mr. Sharp and second was by Mr. Henley.

Mr. Downes explained that this Resolution and the one following are tied to the improvements at Crosshaven Drive and Green Valley Road which is a County-led project funded through state and federal funds and has been in the making for years, long before

the annexation of Cahaba Heights. This project is in the ROW acquisition phase and will take longer to accomplish, but these are standard agreements that require the maintenance of the improvements following construction. Jefferson County will work collaboratively with the contractor and maintain the traffic signals. The scope of work extends from Bearden Drive to the twin homes located near Green Valley Road on Crosshaven Drive and also goes down Green Valley Road to Autumn Lane.

The Mayor called for the question. Roll call vote as follows:

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

RESOLUTION NUMBER 4802

Resolution Number 4802 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An Agreement With Alabama Department Of Transportation For TOPICS Phase VIII STPBH-9802(88) Green Valley

MOTION Motion to approve Resolution Number 4802 was by Mr. Sharp and second was by Mr. Pierce.

Mr. Downes stated that this is the traffic signal Resolution for the same project.

The Mayor called for the question. Roll call vote as follows:

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

NEW BUSINESS (UNANIMOUS CONSENT REQUESTED)

The Mayor opened the floor for unanimous consent for the immediate consideration and action on Resolution Number 4806.

MOTION Motion for unanimous consent for the immediate consideration and action on Resolution Number 4806 was by Mr. Ammons and second was by Mr. Henley. Roll call vote as follows:

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

RESOLUTION NUMBER 4806

Resolution Number 4806 - A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Caprine, Williams Blackstock, And Brailsford And Dunlavey For Professional Services For The Wald Park Master Plan – Phase III (Development Of The Wald Park Redevelopment Master Plan)

MOTION Motion to approve Resolution Number 4806 was by Mr. Ammons and second was by Mr. Pierce.

Mr. Downes gave the background on the planning of Wald Park which was been through two phases and will enter into the third phase. This would include the ability of engineering and geotechnical information through Caprine, renderings through Williams Blackstock and programming through Brailsford and Dunlavey in an amount not to exceed \$75,000. Once done, this will be announced for further public input and conversations.

Mr. Pierce stated that this will add another element to evaluate the best uses and locations for the facilities at Wald Park.

Mr. Ammons indicated that the information that has been gathered in the first two phases has helped the Park Board in decisions concerning programming. This will help to further increase this information.

The Mayor opened the floor for a public hearing. There being no one to address the Council regarding the request, the Mayor closed the public hearing and called for the question. Roll call vote as follows:

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

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 March 28, 2016 at 5 PM.

- Resolution Number 4803 – A Resolution Authorizing the City Manager To Hire 3 New Police Officers And 3 New Firefighter/Paramedics
- Resolution Number 4804 – A Resolution Authorizing The Mayor And City Manager To Execute And Deliver An (MOU) Agreement With Jefferson County For Storm Debris Removal From Devastating Storms Which May Occur In The City Of Vestavia Hills, Alabama

- Ordinance Number 2647 – An Ordinance Authorizing The Mayor And City Manager To Execute And Deliver An Agreement For Cost Sharing For The Grants Mill Road Corridor Study
- Resolution Number 4805 – A Resolution Authorizing The City Manager To Execute And Deliver An Agreement With Sain Associates For Professional Traffic Engineering Services Associated With A Corridor Study Of A Defined Segment Of Dolly Ridge Road From E.A. Hollis Drive To Pump House Road/Cahaba Heights Road

CITIZEN COMMENTS

David Harwell, 1803 Catala Road, asked the total debt for the City and how much is paid down annually.

Mr. Turner stated that the City is about \$54 million in debt and paid down about \$4 million this year.

James “Jim” Johnson, 2441 Chestnut Road, stated that he is on the Bessemer Airport Authority Board and indicated that he is on two committees (Economic Development and Finance). He stated that they are changing the name of the airport and working with several government entities to change this to be recognized as a regional airport. He suggested that there might be some collaborative things that can be done in conjunction with this project and wanted to let the Council know that he is there. He invited the Council to visit the airport and see what’s being done.

Missy Turner, 3095 Greendale Road, asked about litter on the roadways.

Mr. Downes stated that Mr. Davis has been working with the Keeping Vestavia Clean group. Mr. Davis explained their efforts to pick up litter.

Ms. Turner asked about the Action Center and how it works. She indicated that she reports something and gets a message back that it is completed but nothing ever happens.

Mr. Downes explained how the Action Center works.

Mr. Pierce stated that the City has formed a committee to study the issue of feral cats in the community.

Ms. Turner asked if the public can attend.

Mr. Pierce stated that anyone can attend. The initial meeting is scheduled for 10 AM Friday morning.

Robert Debuys, 3467 Mossbrook Lane, stated that it would be nice if the public got a recount of what happened after the interviews in order to determine how the selection was made.

The Mayor stated that a lot of work was done at the intersection of Leona and Montgomery Highway.

Chief Rary stated that they did a record check and there have been no accidents at that intersection. Most vehicles on Old Creek Trail obey the stop sign and wait for the light. In busier times, some vehicles might block the intersection; however, for the most part, people comply.

Mr. Brady stated that he agrees that a yield sign needs to be installed at the intersection pursuant to the recommendation of the PD. He stated that he has assigned this task to his assistant engineer and she is studying the situation.

Mr. Harwell asked Chief Rary if the stop sign is independent from the traffic light.

EXECUTIVE SESSION

The Mayor stated that the Council needed to go into executive session for an estimated 60 minutes to discuss pending or current litigation. He opened the floor for a motion.

MOTION Motion to move into executive session for an estimated 60 minutes to discuss the pending or current was by Mr. Pierce and second was by Mr. Henley. Roll call vote as follows:

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

The Council exited the Chamber and entered into Executive Session at 6:50 PM. At 7:45 PM, the Council re-entered the Chamber and the Mayor called the meeting to order.

At 7:46 PM, Mr. Pierce made a motion to adjourn; seconded by Mr. Henley. Meeting adjourned at 7:46 PM.

Alberto C. Zaragoza, Jr
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

RESOLUTION NUMBER 4803

A RESOLUTION AUTHORIZING THE CITY MANAGER TO HIRE 3 NEW POLICE OFFICERS AND 3 NEW FIREFIGHTERS/PARAMEDICS

WHEREAS, the quality of life and sustainability of Vestavia Hills, Alabama is reliant upon the solid foundation of an effective public safety function; and

WHEREAS, the Fire Department and the Police Department of the City of Vestavia Hills, Alabama researched personnel staffing in their individual departments; and

WHEREAS, the purpose of this research was to consider staffing needs for the public interest of citizens of the City of Vestavia Hills, Alabama; and

WHEREAS, the research concluded that five (5) new police officers are needed for the Vestavia Hills Police Department and three (3) additional personnel are needed for Vestavia Hills Fire Department to ensure the health, safety and welfare of the citizens of the City of Vestavia Hills, Alabama; and

WHEREAS, two (2) personnel from the Police Department will be retiring this year; and

WHEREAS, the Police Chief has researched the issues and recommended that three (3) additional police officers should be hired in addition to the replacements of the two (2) retiring officers; and

WHEREAS, as a result of the retirements, the three (3) additional personnel for the Police Department will be no additional cost to the City for this Fiscal Year; and

WHEREAS, the Fire Department has determined that additional staffing is needed at Fire Station 4 to supplement staffing; and

WHEREAS, the Fire Chief has researched the issues and recommended that three (3) additional personnel be hired to supplement staffing at Vestavia Hills Fire Station 4 as detailed in “Exhibit A” which is attached to and incorporated into this Resolution Number 4805 as though written fully therein; and

WHEREAS, the Fire Department has determined that the three (3) positions will cost the City of Vestavia Hills, Alabama an additional \$47,844 for this Fiscal Year

including compensation, and personal protective equipment and will be expensed from the General Fund; and

WHEREAS, the Mayor and City Council feel it is in the best public interest to authorize the City Manager to retain the additional personnel needed in both departments.

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

1. The City Manager is hereby authorized to hire three (3) new police officers and three (3) new firefighters/paramedics and equip said personnel with required uniforms and equipment; and
2. This Resolution Number 4803 is effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 14th day of March, 2016.

Steve Ammons
Mayor Pro-Tem

ATTESTED BY:


Rebecca Leavings
City Clerk

Exhibit A



VESTAVIA HILLS FIRE DEPARTMENT

MEMORANDUM

TO: Jeff Downes, City Manager
FROM: Jim St. John, Fire Chief 
DATE: February 9, 2016
RE: New Fire Department personnel

I've calculated the cost of additional personnel to supplement staffing at Fire Station 4, as we discussed yesterday.

A Firefighter hired at Grade 17, Step 2 with a 5% premium for a Paramedic license and the \$100 per month hazardous duty benefit, receives compensation of \$3,381 per month. Using a factor of 1.23 to account for benefits paid by the City, total cost per position, per month is \$4,158.

If we are not able to hire trained Firefighter/Paramedics, total compensation would drop to \$3,667 per month, but we would spend approximately \$3,000 per position for Recruit training within one year.

Each newly hired Firefighter would also require \$500 for uniforms and approximately \$2,974 for personal protective equipment (PPE).

I do not expect a new certification list available from PBJC until June, so if we hired trained Firefighter/Paramedics effective July 1, 2016, total costs through the end of FY 2016 would be:

	<u>6 positions</u>	<u>3 positions</u>
Compensation	\$74,844	\$37,422
PPE	\$17,844	\$ 8,922
Uniforms	\$ 3,000	\$ 1,500
Total	\$95,688	\$47,844

RESOLUTION NUMBER 4804

A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO EXECUTE AND DELIVER A MEMORANDUM OF UNDERSTANDING (MOU) AGREEMENT WITH JEFFERSON COUNTY FOR STORM DEBRIS REMOVAL FROM DEVASTATING STORMS WHICH MAY OCCUR IN THE CITY OF VESTAVIA HILLS, ALABAMA

WHEREAS, The Federal Emergency Management Agency (FEMA) provides assistance to local governments to alleviate suffering and damage from disasters, and broadens existing relief programs to encourage disaster preparedness plans and programs, coordination and responsiveness, insurance coverage, and hazard mitigation measures; and

WHEREAS, FEMA offers assistance to cities, counties, states and other entities through its Public Assistance (PA) Grant Program; and

WHEREAS, all disasters that occur after January 1, 2016 are governed under the “FEMA Public Assistance Program and Policy Guide”; and

WHEREAS, under these guidelines the local government is to remove the debris and monitor the cleanup; and

WHEREAS, the PA offers an additional 2% of the cost of debris removal with a pre-event debris removal contract; and

WHEREAS, FEMA may pay an additional percentage with the pre-existing contract if cleanup is completed within a certain timeframe; and

WHEREAS, the Alabama County Commission Association (ACCA) has prepared a statewide pre-qualified cleanup plan under which counties and municipalities can participate; and

WHEREAS, the ACCA negotiated contracts for debris removal and monitoring; and

WHEREAS, this alleviates the burden of the City to bid contracts in the midst of the trauma caused by a disastrous event; and

WHEREAS, this allows for the City to know the cost in price per unit before any such event should occur; and

WHEREAS, the Memorandum of Understanding (MOU) Agreement with Jefferson County will be an approved plan in place prior to an event; a copy of which is

marked as Exhibit A , attached to and incorporated into this Resolution Number 4804 as though written fully therein; and

WHEREAS, the Mayor and City Council find it is in the best public interest to participate in said Agreement.

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

1. The Mayor and City Manager are hereby authorized to execute and deliver an MOU Agreement with Jefferson County for and on behalf of the City of Vestavia Hills, Alabama pursuant to the terms and conditions as detailed in the attached Exhibit A; and
2. This Resolution Number 4804 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 14th day of March, 2016.

Steve Ammons
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE JEFFERSON COUNTY COMMISSION
AND THE CITY OF _____
REGARDING DEBRIS REMOVAL AND MONITORING
SERVICES**

WHEREAS, Alabama law authorizes counties and municipalities to enter into agreements to provide services to each other under mutually-agreed to terms and conditions; and

WHEREAS, following recent natural disasters in Alabama, all counties have entered into regional pre-event debris removal and monitoring services contracts to have available for each county in the event of a disaster within one or more counties necessitating the need for debris removal; and

WHEREAS, the Invitation to Bid for these regional pre-event contracts included a provision to require the successful bidder to provide services within the jurisdictional limits of a municipality within an activating county if the county and the municipality had entered into a memorandum of understanding allowing the activating county to assume responsibility for debris removal and/or monitoring services on municipal property within the jurisdictional limits of the municipality; and

WHEREAS, these regional county contracts provide that services may be performed within the jurisdictional limits of a municipality within an activating county at the direction of the county if, prior to the disaster warranting the need for debris removal and/or monitoring services, the county and the municipality have entered into a written memorandum of understanding for the removal of disaster-related debris from municipal property on behalf of the municipality; and

WHEREAS, Jefferson County is a party to the Region 6 county contracts for debris removal and monitoring services, which contracts provide for debris removal and monitoring services to be provided to the county upon activation under procedures set out in such contracts; and

WHEREAS, the city of _____ is not properly equipped to effectively perform debris removal operations in the event of a disaster within its jurisdictional limits, and as such, the county and municipality find it to be in their mutual best interests and to the benefit of the citizens they represent to enter into this memorandum of understanding to allow the county to have debris removal services performed on the municipal property within the jurisdictional limits of the municipality pursuant to the county regional contract for debris removal services and, if necessary, to have such debris removal monitored pursuant to the county regional contract for monitoring services; and

WHEREAS, both the Jefferson County Commission and the _____ City Council have adopted resolutions agreeing to enter into this memorandum of understanding between the Jefferson County Commission and the city of _____, which resolutions are attached hereto and incorporated by reference; and

WHEREAS, the Jefferson County Commission and the city of _____, as evidenced by the above referenced resolutions, also agree to the following terms and conditions:

1. That this memorandum of understanding shall only apply in the event that, following a disaster necessitating debris removal and/or monitoring services, the county has activated the Region 6 contract for debris removal and/or monitoring services pursuant to procedures set out in said contract.
2. That in the event the municipality desires that the county have debris removal and/or monitoring services performed on municipal property within its municipal jurisdictional limits pursuant to this memorandum of understanding, the mayor or other municipal official designated in writing by the _____ City Council shall send written notice to the county within five calendar days of a disaster necessitating the removal of debris that the municipality desires to have the county perform such services under the terms and conditions set out in the county regional contracts.
3. That, upon receipt of such request, the county determines that it can provide those services within the jurisdictional limits of the municipality pursuant to the county regional debris removal and/or monitoring services contracts.
4. That the debris removal and/or monitoring services provided to the municipality shall be limited to available contract personnel and equipment not required to meet the needs of the county, and that the judgment of the Jefferson County Commission or its designee shall be final as to the personnel and equipment so available and as to the time of providing such services.
5. That the county shall only provide services within the jurisdictional limits of the municipality that are provided for in the regional county debris removal and monitoring services contracts as set out in Exhibit A of the contracts, which are attached hereto and incorporated by reference.
6. That the city of _____ shall cooperate with county and contract personnel as necessary to ensure proper management and administration of the removal of debris within the jurisdictional limits of the municipality pursuant to the regional county contracts for debris removal and/or monitoring services, which cooperation shall include, but not be limited to, allowing county personnel and their contractors access as necessary to perform debris removal and/or monitoring services as determined necessary and appropriate by county personnel and assisting as necessary to provide documentation required under the county regional joint debris removal and/or monitoring services contracts.
7. That the municipality understands that monitoring of the debris removal may be necessary and agrees to cooperate with all debris removal monitoring services conducted within its jurisdictional limits pursuant to the county regional monitoring services contract or as otherwise provided by the county.
8. That there shall be no debris removal and/or monitoring services performed on private property under this memorandum of understanding and that only services authorized under the regional county contracts as determined by the Jefferson County Commission or its designated county personnel shall be provided.

9. That the county may suspend or terminate the removal of debris and/or monitoring services within the jurisdictional limits of the municipality as it deems appropriate or necessary due to (a) conditions within the county; (b) issues related to the regional county contracts for debris removal and/or monitoring; (c) lack of cooperation from municipal officials and/or employees; or (d) other reasons as warranted in the discretion of the county.

10. That by entering into this memorandum of understanding, the county assumes no liability for damages to any property of the municipality or any citizens of the municipality resulting from the debris removal or monitoring services conducted by the debris removal or monitoring services contractor. Additionally, the undersigned municipality shall indemnify and hold harmless Jefferson County, its officials, employees, and agents for any damage of any type whatsoever to the municipality's property or to personal property and fixtures situated thereon, or for bodily injury or death to persons on the municipality's property, and hereby releases, discharges and waives any and all actions, either legal or equitable, which the undersigned municipality has, or ever might or may have, by reason of any action of the county and its county officials, employees or debris removal or monitoring services contractors and any action they have taken to accomplish the aforementioned purpose.

11. The municipality shall reimburse the Jefferson County Commission for any and all expenses incurred by the county for the removal of debris within the jurisdictional limits of the municipality and/or for monitoring services related to the debris removal pursuant to the reimbursement schedule presented to the municipality by the county at the time the municipality submits its request for services as provided in this memorandum of understanding;

12. That the municipality's failure to timely reimburse the county pursuant to the reimbursement schedule presented to the municipality by the county shall be deemed a breach of this memorandum of understanding which shall result in termination of this agreement and any other remedies available to the county under the law.

13. That in the event the county receives reimbursement for any or all of its costs related to debris removal and/or monitoring services performed within the municipality's jurisdictional limits from any government or other source or sources, the county shall pay the municipality its pro rata share of such reimbursement within thirty days of receipt by the county provided the municipality has paid in full its portion of the cost of debris removal and/or monitoring services pursuant to the requirements set out in paragraph 11 above. However, if at any time after the county has been reimbursed from any source and has reimbursed the municipality in accordance with this paragraph, it is determined that the debris removal and/or monitoring services were not performed in accordance with such source or sources' debris removal and/or monitoring services laws, rules, regulations or guidance, the municipality shall promptly reimburse the County within 15 days the amount of the reduction of the county's reimbursement from such source related to the debris removal and/or monitoring services performed within the municipalities jurisdictional limits.

14. That this agreement only applies in the event the county has activated the regional county contract for debris removal and/or monitoring services and that the county shall not be obligated to provide debris removal and/or monitoring services on municipal property within the jurisdictional limits of the municipality except as specifically provided herein.

15. That, except as provided in paragraph 11, this memorandum of understanding shall be in full force and effect from _____ until December 31, 2016, but may be renewed upon mutual consent of both parties approved in writing by both parties no later than December 1, 2016.

Executed on this the _____ day of _____, 201__.

James A. (Jimmie) Stephens, President

Jefferson County Commission

_____, Mayor

City of _____

JEFFERSON COUNTY COMMISSION



T. JOE KNIGHT
COMMISSIONER DISTRICT IV
Suite 220
716 Richard Arrington, Jr. Blvd. N
Birmingham, Alabama 35203
Telephone (205) 325-5070
FAX (205) 325-4881

February 8, 2016

RE: Jefferson County Debris MOU

Dear Mayor and Council:

During the last five years we have had several events that have had a profound effect on many of our communities. For those of us in public office, we deal with the event and then face the daunting task of clean-up. The purpose of this letter is to provide information about the clean-up process following a disastrous event and things we can do to facilitate a coordinated effort in the future. Although the clean-up is the responsibility of the local government, most cities or counties do not have the resources to respond to a substantial natural disaster.

The Federal Emergency Management Agency (FEMA) offers assistance to cities, counties, states and other entities through its Public Assistance (PA) grant program. FEMA has recently published the first edition of the "FEMA Public Assistance Program and Policy Guide" that can be found at <https://www.fema.gov/public-assistance-policy-and-guidance>. All disasters that occur after January 1, 2016 are governed under these rules and regulations. Under these guidelines, the local government is faced with removing the debris and monitoring the clean-up. This often requires two separate contracts as one company may not do both.

Generally, FEMA will absorb 75% of the cost of public clean-up if the total damages in the state and local area reach a certain threshold. If the threshold is not met, FEMA will not offer assistance through this program. The remaining 25% of the cost is borne by the state and the local governments. Typically, the state will pick up 10% of the tab and the local entities pay 15% although these percentages sometimes vary.

Under FEMA's pilot program, FEMA will pay an additional 2% of the cost if a pre-event debris removal contract is in place. FEMA may also pay an additional percentage of the cost if the clean-up is completed within a certain timeframe.

FEMA does not provide money up front and thus, the local entity provides payment to its contractors, then seeks reimbursement through FEMA's PA program. Presently, FEMA is reviewing this program. Reimbursement is conditioned upon documented costs. There are many pitfalls that may result in FEMA discounting portions of a local government's claim and thus, proper documentation is an absolute must. Audits by FEMA are not uncommon.

The Alabama County Commission Association (ACCA) has prepared a state-wide plan under which counties can have a pre-qualified clean-up plan in place. By having pre-negotiated contracts in place for debris removal and monitoring, local governments are not faced with the burden, vexation and imponderables of having to bid these contracts in the midst of the trauma caused by a disastrous event. The local entities will know their costs in price per unit well before an event occurs. In addition, as outlined above, FEMA will pay an additional amount for having a pre-qualified contract in place.

The ACCA has divided the state into 7 regions. Jefferson County is in Region 6 along with St. Clair, Blount, Shelby, Talladega, Clay, Calhoun, Cleburne and Randolph. The bids for debris removal and monitoring have already been let for these regions. The debris removal contractor for our region is DRC Emergency Services, LLC from Mobile. (Exhibit A) The monitoring contractor is Thompson Consulting Services out of Lake Mary, Florida. Please find enclosed the prices for these services. (Exhibit B)

Any municipality in Jefferson County may employ these contractors without having to go through the bid process if the municipality has executed a Memorandum of Understanding (MOU) Agreement with Jefferson County. If the city and county do not have this MOU in place prior to an event, the city is not allowed to utilize the county's contract. The municipalities are not obligated to use the pre-negotiated contract and may bid their own contracts for removal and monitoring.

Please find enclosed the MOU (Exhibit C) that has been prepared by the ACCA for our region. These MOUs are similar throughout the state and are recognized by FEMA. If your city wishes to participate in this agreement, please have your council adopt this MOU and return a copy to my office as soon as possible by mail, hand delivery or electronically to:

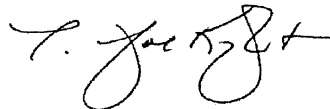
Zach Brooks, Administrative Assistant
Commissioner Joe Knight
Suite 220 Courthouse
716 Richard Arrington Jr. Blvd N
Birmingham, AL 35203

Email: Brooks@jccal.org

Facsimile: (205) 325-4881

Hopefully, this information has been helpful. We certainly hope we never have to deal with this situation again, however, our history does not lend great confidence to that premise. If you have any questions, please let us know.

Best regards,



T. Joe Knight, Commissioner
Vice-Chair, Jefferson Co. EMA

TJK/vd

Enclosures: Exhibits A-E

Exhibit

A

BID SUBMITTAL FORM

Debris Removal Services Bid - Region 6

Company Name: DRC Emergency Services, LLC

Address: P.O.Box 82319, Mobile, Alabama 36608

Bid Submitted by: Marc Watkins
 (Name of company representative)

Title: Vice President of Estimating e-mail address: Mwatkins@drcusa.com

Phone: 251-343-3581 Fax: 251-343-5554

BID PRICING					
Alabama County Joint Bid Program					
Disaster Debris Removal Bid for Region <u>6</u>					
ITEM	Est. QTY	DESCRIPTION	UNITS	UNIT PRICE	AMOUNT
001.		Removal and Disposal of Eligible Vegetative Debris at Debris management site (see note no. 1)			
	N/A	Haul Range - 0 to 15 miles	Cubic	\$6.86	\$6.86
	N/A	Haul Range - 16 to 30 miles	Yard	\$7.36	\$7.36
	N/A	Haul Range - 31 to 60 miles		\$8.11	\$8.11
	N/A	Haul Range - Greater than 60 miles		\$8.91	\$8.91
002.		Removal and Disposal of Eligible Construction & Demolition (C&D) debris to approved Landfill (see note no. 1)			
	N/A	Haul Range - 0 to 15 miles	Ton	\$56.92	\$56.92
	N/A	Haul Range - 16 to 30 miles		\$58.92	\$58.92
	N/A	Haul Range - 31 to 60 miles		\$61.92	\$61.92
	N/A	Haul Range - Greater than 60 miles		\$64.92	\$64.92
003.	N/A	Air Curtain Burning Vegetative Debris At Debris management site (Including cost of Ash Removal & Disposal)	Cubic Yard	\$3.60	\$3.60
004.	N/A	Chipping or Grinding Debris at Debris management site (Including cost of Reduced Debris Removal & Disposal)	Cubic Yard	\$6.95	\$6.95
005.	N/A	Stump Extraction (see note no. 2) Diameter - larger than 24" to 36"	Each	\$150.00	\$150.00

	N/A N/A	Diameter – larger than 36" to 48" Diameter – larger than 48"	Stump	\$200.00 \$250.00	\$200.00 \$250.00
006.	N/A	Stump Fill Dirt (Fill dirt for stump holes after removal)	Cubic Yard	\$15.00	\$15.00
007.	N/A N/A N/A N/A N/A	Flush Cutting Hazardous Trees (see note no. 3 and 4) 6" – 12" diameter 13" – 24" diameter 25" – 36" diameter 37" – 48" diameter 49" diameter and up	Each Tree	\$30.00 \$95.00 \$170.00 \$260.00 \$340.00	\$30.00 \$95.00 \$170.00 \$260.00 \$340.00
008.	N/A	Trees with Hazardous Hanging Limbs (2" diameter limbs and up) Hazardous hanging limb removal	Each Tree	\$70.00	\$70.00
009.	N/A	Freon Recovery and Recycling	Each Unit	\$25.00	\$25.00
010.	N/A	Pick up and Disposal of "White Goods"	Each Unit	\$25.00	\$25.00
011.	N/A	Dead Animal Collection, Transport and Disposal	Per Pound	\$1.00	\$1.00
012.	N/A	Electronic Waste	Each Unit	\$35.00	\$35.00
013.	N/A	Household Hazardous Waste (HHW) HHW Removal and Disposal	Per Pound	\$4.95	\$4.95
014.	N/A	Waterway Debris Removal	Per Cubic Yard	\$28.50	\$28.50
015.	N/A	Sand and Silt Removal	Per Cubic Yard	\$9.00	\$9.00
016.	N/A	Vehicle Removal	Each	\$195.00	\$195.00
017.	N/A	Vessel Removal (Land)	Linear Foot	\$25.00	\$25.00
018.	N/A	Vessel Removal (Marine)	Linear Foot	\$50.00	\$50.00
019.	N/A	Blowaste Removal	Pound	\$7.95	\$7.95

note No. 1: Haul distances shall be calculated using a straight line distance from the loading area to the nearest approved reduction site or landfill.

note No. 2: Stump/tree diameter measured 2 feet up from ground line.

note No. 3: Flush cutting is defined as level to the ground line.

note No. 4: Tree diameter measured 4.5 feet up from ground line.

Exhibit

B

BID SUBMITTAL FORM

Monitoring Services Bid – Region 6

Company Name: Thompson Consulting Services

Address: 1135 Townpark Avenue, Suite 2101

Lake Mary, Florida 32746

Bid Submitted by: Nate Counsell
(Name of company representative)

Title: Vice President e-mail address: ncounsell@thompsoncs.net

Phone: 407-792-0018 Fax: 407-878-7858

Item	Description	Unit Price (Hourly Rate)	Amount
001.	Fixed Site Monitoring	\$ 34.00	\$ 34.00
002.	Field Debris Monitoring	\$ 35.00	\$ 35.00
003.	Project Manager	\$ 45.00	\$ 45.00
004.	Clerical Staff	\$ 15.00	\$ 15.00
005.	Clerical Supervisor	\$ 20.00	\$ 20.00

Exhibit

C

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE JEFFERSON COUNTY COMMISSION
AND THE CITY OF _____
REGARDING DEBRIS REMOVAL AND MONITORING
SERVICES**

WHEREAS, Alabama law authorizes counties and municipalities to enter into agreements to provide services to each other under mutually-agreed to terms and conditions; and

WHEREAS, following recent natural disasters in Alabama, all counties have entered into regional pre-event debris removal and monitoring services contracts to have available for each county in the event of a disaster within one or more counties necessitating the need for debris removal; and

WHEREAS, the Invitation to Bid for these regional pre-event contracts included a provision to require the successful bidder to provide services within the jurisdictional limits of a municipality within an activating county if the county and the municipality had entered into a memorandum of understanding allowing the activating county to assume responsibility for debris removal and/or monitoring services on municipal property within the jurisdictional limits of the municipality; and

WHEREAS, these regional county contracts provide that services may be performed within the jurisdictional limits of a municipality within an activating county at the direction of the county if, prior to the disaster warranting the need for debris removal and/or monitoring services, the county and the municipality have entered into a written memorandum of understanding for the removal of disaster-related debris from municipal property on behalf of the municipality; and

WHEREAS, Jefferson County is a party to the Region 6 county contracts for debris removal and monitoring services, which contracts provide for debris removal and monitoring services to be provided to the county upon activation under procedures set out in such contracts; and

WHEREAS, the city of _____ is not properly equipped to effectively perform debris removal operations in the event of a disaster within its jurisdictional limits, and as such, the county and municipality find it to be in their mutual best interests and to the benefit of the citizens they represent to enter into this memorandum of understanding to allow the county to have debris removal services performed on the municipal property within the jurisdictional limits of the municipality pursuant to the county regional contract for debris removal services and, if necessary, to have such debris removal monitored pursuant to the county regional contract for monitoring services; and

WHEREAS, both the Jefferson County Commission and the _____ City Council have adopted resolutions agreeing to enter into this memorandum of understanding between the Jefferson County Commission and the city of _____, which resolutions are attached hereto and incorporated by reference; and

WHEREAS, the Jefferson County Commission and the city of _____, as evidenced by the above referenced resolutions, also agree to the following terms and conditions:

1. That this memorandum of understanding shall only apply in the event that, following a disaster necessitating debris removal and/or monitoring services, the county has activated the Region 6 contract for debris removal and/or monitoring services pursuant to procedures set out in said contract.
2. That in the event the municipality desires that the county have debris removal and/or monitoring services performed on municipal property within its municipal jurisdictional limits pursuant to this memorandum of understanding, the mayor or other municipal official designated in writing by the _____ City Council shall send written notice to the county within five calendar days of a disaster necessitating the removal of debris that the municipality desires to have the county perform such services under the terms and conditions set out in the county regional contracts.
3. That, upon receipt of such request, the county determines that it can provide those services within the jurisdictional limits of the municipality pursuant to the county regional debris removal and/or monitoring services contracts.
4. That the debris removal and/or monitoring services provided to the municipality shall be limited to available contract personnel and equipment not required to meet the needs of the county, and that the judgment of the Jefferson County Commission or its designee shall be final as to the personnel and equipment so available and as to the time of providing such services.
5. That the county shall only provide services within the jurisdictional limits of the municipality that are provided for in the regional county debris removal and monitoring services contracts as set out in Exhibit A of the contracts, which are attached hereto and incorporated by reference.
6. That the city of _____ shall cooperate with county and contract personnel as necessary to ensure proper management and administration of the removal of debris within the jurisdictional limits of the municipality pursuant to the regional county contracts for debris removal and/or monitoring services, which cooperation shall include, but not be limited to, allowing county personnel and their contractors access as necessary to perform debris removal and/or monitoring services as determined necessary and appropriate by county personnel and assisting as necessary to provide documentation required under the county regional joint debris removal and/or monitoring services contracts.
7. That the municipality understands that monitoring of the debris removal may be necessary and agrees to cooperate with all debris removal monitoring services conducted within its jurisdictional limits pursuant to the county regional monitoring services contract or as otherwise provided by the county.
8. That there shall be no debris removal and/or monitoring services performed on private property under this memorandum of understanding and that only services authorized under the regional county contracts as determined by the Jefferson County Commission or its designated county personnel shall be provided.

9. That the county may suspend or terminate the removal of debris and/or monitoring services within the jurisdictional limits of the municipality as it deems appropriate or necessary due to (a) conditions within the county; (b) issues related to the regional county contracts for debris removal and/or monitoring; (c) lack of cooperation from municipal officials and/or employees; or (d) other reasons as warranted in the discretion of the county.

10. That by entering into this memorandum of understanding, the county assumes no liability for damages to any property of the municipality or any citizens of the municipality resulting from the debris removal or monitoring services conducted by the debris removal or monitoring services contractor. Additionally, the undersigned municipality shall indemnify and hold harmless Jefferson County, its officials, employees, and agents for any damage of any type whatsoever to the municipality's property or to personal property and fixtures situated thereon, or for bodily injury or death to persons on the municipality's property, and hereby releases, discharges and waives any and all actions, either legal or equitable, which the undersigned municipality has, or ever might or may have, by reason of any action of the county and its county officials, employees or debris removal or monitoring services contractors and any action they have taken to accomplish the aforementioned purpose.

11. The municipality shall reimburse the Jefferson County Commission for any and all expenses incurred by the county for the removal of debris within the jurisdictional limits of the municipality and/or for monitoring services related to the debris removal pursuant to the reimbursement schedule presented to the municipality by the county at the time the municipality submits its request for services as provided in this memorandum of understanding;

12. That the municipality's failure to timely reimburse the county pursuant to the reimbursement schedule presented to the municipality by the county shall be deemed a breach of this memorandum of understanding which shall result in termination of this agreement and any other remedies available to the county under the law.

13. That in the event the county receives reimbursement for any or all of its costs related to debris removal and/or monitoring services performed within the municipality's jurisdictional limits from any government or other source or sources, the county shall pay the municipality its pro rata share of such reimbursement within thirty days of receipt by the county provided the municipality has paid in full its portion of the cost of debris removal and/or monitoring services pursuant to the requirements set out in paragraph 11 above. However, if at any time after the county has been reimbursed from any source and has reimbursed the municipality in accordance with this paragraph, it is determined that the debris removal and/or monitoring services were not performed in accordance with such source or sources' debris removal and/or monitoring services laws, rules, regulations or guidance, the municipality shall promptly reimburse the County within 15 days the amount of the reduction of the county's reimbursement from such source related to the debris removal and/or monitoring services performed within the municipalities jurisdictional limits.

14. That this agreement only applies in the event the county has activated the regional county contract for debris removal and/or monitoring services and that the county shall not be obligated to provide debris removal and/or monitoring services on municipal property within the jurisdictional limits of the municipality except as specifically provided herein.

15. That, except as provided in paragraph 11, this memorandum of understanding shall be in full force and effect from _____ until December 31, 2016, but may be renewed upon mutual consent of both parties approved in writing by both parties no later than December 1, 2016.

Executed on this the _____ day of _____, 201__.

James A. (Jimmie) Stephens, President

Jefferson County Commission

_____, Mayor

City of _____

Exhibit

D

REGION 6 CONTRACT FOR DEBRIS REMOVAL SERVICES

INTRODUCTION

The Association of County Commissions of Alabama (hereinafter "the Association") recently conducted a bid offering for regional debris removal services through its Alabama County Joint Bid Program. Alabama's 67 counties were divided into seven regions for the purposes of this bid offering. Counties in Region 6 include Blount, Calhoun, Clay, Cleburne, Jefferson, Randolph, St. Clair, Shelby and Talladega. Pursuant to resolution adopted by each county in Region 6, Calhoun County has been selected to serve as the awarding authority for all counties in the region for purposes of awarding the bid to the lowest responsible bidder meeting bid specifications and executing a contract with the successful bidder on behalf of all Region 6 counties. Copies of the counties' resolutions are on file at the Association office.

Bids for debris removal services in Region 6 were opened at the Association office on July 31, 2015 and on August 27, 2015, the Calhoun County Commission awarded the regional debris removal contract for Region 6 to DRC Emergency Services LLC as the lowest responsible bidder meeting bid specifications. Copies of all bids submitted in response to this bid offering are on file at the Association office. A copy of the bid submitted by DRC Emergency Services LLC, including the Invitation to Bid, is attached hereto as Exhibit A and incorporated herein by reference. By executing this agreement, DRC Emergency Services LLC agrees to provide all services included in its bid, and under the terms and conditions set out in said Invitation to Bid, Bid Specifications, and accompanying documentation, including but not limited to those provisions specifically set out below.

GENERAL TERMS OF CONTRACT

As a result of the foregoing, this agreement is entered into pursuant to Code of Alabama 1975, § 41-16-50(b) between the Calhoun County Commission, the awarding authority for Region 6 counties, through its chairperson, J.D. Hess, and DRC Emergency Services LLC, hereinafter referred to as "the Contractor", through the undersigned authorized agent, for debris removal services in all counties in Region 6 under the following terms and conditions:

1. Contractor agrees to provide any and all debris removal services in compliance with the provisions and requirements of the Invitation to Bid and Bid Specifications attached as Exhibit A to any and all counties in Region 6;
2. Contractor understands and agrees that it may be necessary to provide such services simultaneously in more than one county in the Region and that failure to provide such services in all counties at any time necessary shall be deemed a default of this agreement;
3. Both parties agree that only services specifically set out in Exhibit A shall be provided by the contractor under a Notice to Proceed and that such services shall be provided as set out therein;
4. Both parties agree that, under the terms of this agreement, no services shall be provided within the jurisdictional limits of a municipality within the county unless the county and the municipality have previously entered into a written memorandum of understanding that meets FEMA guidelines and

- regulations, whereby the county agrees to assume responsibility for the removal of disaster-related debris on behalf of the municipality;
5. Contractor agrees to comply with the Services Activation Procedures included in the Bid Specifications by responding within 24 hours of receipt of a Notice to Proceed from any county in Region 6;
 6. Contractor also agrees to comply with the Notice to Proceed Procedures attached hereto as Exhibit B and incorporated herein by reference;
 7. Contractor agrees to provide each county in Region 6 with proper contact information for delivery of a Notice to Proceed at the time of execution of this contract and where necessary, to provide updated information regarding same throughout the term of this agreement;
 8. Contractor agrees to execute a payment and performance bond in the amount of \$1,000,000 at the time of execution of the contract made payable to Calhoun County on behalf of all counties in Region 6, which bond shall be called in on behalf of a county sending a Notice to Proceed in the event the Contractor fails to execute the performance bond required under this agreement upon receipt of a Notice to Proceed or fails to satisfy any other obligations under this agreement;
 9. Contractor also agrees to execute a payment and performance bond made payable to an activating county equal to 100% of the estimated cost of a project conducted on behalf of any activating county in Region 6 upon receipt of a Notice to Proceed from the activating county.
 10. Contractor has provided proof of insurance as part of its bid and hereby agrees to maintain that general and professional liability insurance at all times throughout the terms of this agreement and to notify Calhoun County immediately in the event there is a change in insurance coverage or insurance provider different from that submitted with the contractor's bid;
 11. Both parties agrees to comply with the Pricing and Payment Procedures set out in Exhibit A;
 12. Both parties agree that all billing and payment processing will be handled as provided in Exhibit A and shall be handled directly between the contractor and the county in which debris removal services are provided pursuant to a Notice to Proceed received from the activating county;
 13. Contractor agrees to exercise due care in the performance of all activities performed for an activating county and to be responsible for damages to any property caused by its equipment or workers at no expense to the activating county as provided in Exhibit A;
 14. Contractor agrees to notify the activating county immediately of any damages to any property which occur during debris removal activities as provided in Exhibit A;
 15. Contractor agrees to perform all debris removal activities in compliance with and consistent with the policies and publications of the Alabama Emergency Management Agency, Federal Emergency Management Agency, and Federal Highway Administration in effect at the time of the work being performed as provided in Exhibit A;
 16. Contractor agrees that, as set out in Exhibit A, it will remove at least 30% of debris utilizing its own equipment and personnel within the 180 day time frame for completion of the project whenever providing services to a county in Region 6 pursuant to a Notice to Proceed;
 17. Both parties agree that only work identified in the Scope of Services set out in Exhibit A shall be performed pursuant to this agreement and there shall be no change in scope of services performed or time frames for completion of the project;

18. Both parties agree that the activating county may limit the scope or type of debris to be removed by the contractor and that the debris removal services contractor shall not perform any work in an area that has not been specifically assigned to the contractor by the activating county.
19. Contractor agrees to be responsible for any and all corrective action and/or payment of any resulting fines or penalties required in response to any notices of violations issued by any federal, state, or local agency as a result of the Contractor's actions while conducting activities on behalf of the activating county as provided in Exhibit A;
20. Both parties agree that, as provided in Exhibit A, this contract may be renewed for a second and third year under the identical price, terms, and conditions upon mutual consent of both parties approved in writing by both parties no later than 90 days prior to the expiration of the existing contract;
21. Both parties agree that this contract shall be in full force and effect from November 1, 2015 to October 31, 2016.

WARRANTIES AND REPRESENTATIONS

The contractor shall at all times during the term of this agreement comply with all federal, state, county, and municipal laws, ordinances, and regulations. The contractor shall not discriminate against any employee or applicant due to sex, race, color, creed, national origin or ancestry. The contractor certifies that it is eligible to perform this contract under federal, state, and local law, is not now and has never been debarred from performing federal or state government contracts and that all subcontractors used in the performance of this contract have the same qualifications.

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

PENALTIES, TERMINATION AND DEFAULT

Time is of the essence in providing the services required in this agreement as set out in Exhibit A. As such, the contractor shall be assessed liquidated damages in the amount of \$5000 per calendar day for each day in which contract activities extend beyond the maximum allowable time established.

This contract may be terminated by the awarding authority at any time for the convenience of the counties in Region 6 for any reason. Any county who has activated the services of the contractor through a Notice to Proceed agrees to pay the contractor for all work completed through the termination date.

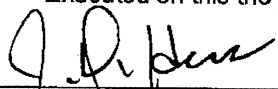
This contract shall be terminated for cause if the contractor defaults in the performance of any of the terms of this agreement, including but not limited to: unsatisfactory job performance or progress, defective work, disputed work, failure to comply with material provisions of the contract, third party claims filed or

reasonable evidence that a claim will be filed, or other reasonable cause; or otherwise fails to cure any other deficiency identified by an activating county within 24 hours of delivery of notice of said deficiency. Under the terms of this agreement, the contractor is in default if he or she fails to respond to a Notice to Proceed issued by any of the counties in Region 6 or fails to complete a project in any county in Region 6 after work has begun pursuant to a Notice to Proceed issued by said county. Calhoun County and all counties in Region 6 retain all other legal or equitable rights or remedies existing as a result of said default, including but not limited to any legal process necessary to obtain any sureties securing this contract. Any reasonable attorney's fee incurred in enforcing this contract will not exceed 5% of said contract price.

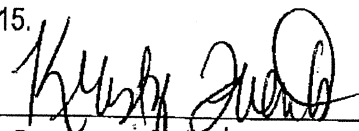
This contract is binding upon and inures to the benefit of the counties in Region 6 and is the whole agreement of the parties and governed by the law of the State of Alabama. There shall be no change orders or modifications of this agreement or services to be performed pursuant to Exhibit A by the contractor or any of the counties in Region 6.

The contractor shall save and hold harmless all counties in Region 6, State of Alabama, the U.S. Government, their respective employees, officials and agents from and against all liability, claims and demands on account of personal injuries (including without limitation workmen's compensation and death claims) or property loss or damages of any kind whatsoever, which arise out of or be in any manner connected with, or are claimed to arise out of or be in any manner connected with, the performance of this agreement, regardless of whether such injury, loss or damage shall be caused by, or be claimed to be caused by, the negligence or other fault of the contractor, any subcontractor, agent or employee.

Executed on this the 8th day of October, 2015.



J.D. Hess, Chairperson
Calhoun County Commission



Vice President Secretary, DRC Emergency
Kristy Fuentes

Exhibit

E

REGION 6 CONTRACT FOR DEBRIS REMOVAL MONITORING SERVICES

INTRODUCTION

The Association of County Commissions of Alabama (hereinafter "the Association") recently conducted a bid offering for regional debris removal monitoring services through its Alabama County Joint Bid Program. Alabama's 67 counties were divided into seven regions for the purposes of this bid offering. Counties in Region 6 include Blount, Calhoun, Clay, Cleburne, Jefferson, Randolph, St. Clair, Shelby and Talladega. Pursuant to resolution adopted by each county in Region 6, Calhoun County has been selected to serve as the awarding authority for all counties in the region for purposes of awarding the bid to the lowest responsible bidder meeting bid specifications and executing a contract with the successful bidder on behalf of all Region 6 counties. Copies of the counties' resolutions are on file at the Association office.

Bids for debris removal monitoring services in Region 6 were opened at the Association office on July 31, 2015 and on August 27, 2015, the Calhoun County Commission awarded the regional debris removal monitoring services contract for Region 6 to Thompson Consulting Services as the lowest responsible bidder meeting bid specifications. Copies of all bids submitted in response to this bid offering are on file at the Association office. A copy of the bid submitted by Thompson Consulting Services, including the Invitation to Bid, is attached hereto as Exhibit A and incorporated herein by reference. By executing this agreement, Thompson Consulting Services agrees to provide all services included in its bid, and under the terms and conditions set out in said Invitation to Bid, Bid Specifications, and accompanying documentation, including but not limited to those provisions specifically set out below.

GENERAL TERMS OF CONTRACT

As a result of the foregoing, this agreement is entered into pursuant to Code of Alabama 1975, § 41-16-50(b) between the Calhoun County Commission, the awarding authority for Region 6 counties, through its chairperson, J.D. Hess, and Thompson Consulting Services, hereinafter referred to as "the Contractor", through the undersigned authorized agent, for debris removal monitoring services in all counties in Region 6 under the following terms and conditions:

1. Contractor agrees to provide any and all debris removal monitoring services in compliance with the provisions and requirements of the Invitation to Bid and Bid Specifications attached as Exhibit A to any and all counties in Region 6;
2. Contractor understands and agrees that it may be necessary to provide such services simultaneously in more than one county in the Region and that failure to provide such services in all counties at any time necessary shall be deemed a default of this agreement;
3. Both parties agree that only services specifically set out in Exhibit A shall be provided by the contractor under a Notice to Proceed and that such services shall be provided as set out therein;
4. Both parties agree that, under the terms of this agreement, no services shall be provided within the jurisdictional limits of a municipality within the county unless the county and the municipality have previously entered into a written memorandum of understanding that meets FEMA guidelines and

- regulations, whereby the county agrees to assume responsibility for debris removal monitoring services on behalf of the municipality;
5. Contractor agrees to comply with the Services Activation Procedures included in the Bid Specifications by responding within 24 hours of receipt of a Notice to Proceed from any county in Region 6;
 6. Contractor also agrees to comply with the Notice to Proceed Procedures attached hereto as Exhibit B and incorporated herein by reference;
 7. Contractor agrees that once the contract is activated, the Contractor shall provide the services set out in the Bid Specifications to the extent necessary to meet the needs of the county.
 8. Contractor agrees to provide each county in Region 6 with proper contact information for delivery of a Notice to Proceed at the time of execution of this contract and where necessary, to provide updated information regarding same throughout the term of this agreement;
 9. Contractor agrees to execute a payment and performance bond in the amount of \$1,000,000 at the time of execution of the contract made payable to Calhoun County on behalf of all counties in Region 6, which bond shall be called in on behalf of a county sending a Notice to Proceed in the event the Contractor fails to execute the performance bond required under this agreement upon receipt of a Notice to Proceed or fails to satisfy any other obligations under this agreement;
 10. Contractor has provided proof of insurance as part of its bid and hereby agrees to maintain that general and professional liability insurance at all times throughout the terms of this agreement and to notify Calhoun County immediately in the event there is a change in insurance coverage or insurance provider different from that submitted with the contractor's bid;
 11. Both parties agree to comply with the Pricing and Payment Procedures set out in Exhibit A;
 12. Both parties agree that all billing and payment processing will be handled as provided in Exhibit A and shall be handled directly between the contractor and the county in which debris removal monitoring services are provided pursuant to a Notice to Proceed received from the activating county;
 13. Contractor agrees to exercise due care in the performance of all activities performed for an activating county and to be responsible for damages to any property caused by its equipment or workers at no expense to the activating county as provided in Exhibit A;
 14. Contractor agrees to notify the activating county immediately of any damages to any property which occur during debris removal activities as provided in Exhibit A;
 15. Contractor agrees to perform all debris removal monitoring activities in compliance with and consistent with the policies and publications of the Alabama Emergency Management Agency, Federal Emergency Management Agency, and Federal Highway Administration in effect at the time of the work being performed as provided in Exhibit A;
 16. Both parties agree that only work identified in the Scope of Services set out in Exhibit A shall be performed pursuant to this agreement and there shall be no change in scope of services performed or time frames for completion of the project;
 17. Contractor agrees to be responsible for any and all corrective action and/or payment of any resulting fines or penalties required in response to any notices of violations issued by any federal,

- state, or local agency as a result of the Contractor's actions while conducting activities on behalf of the activating county as provided in Exhibit A;
18. Both parties agree that, as provided in Exhibit A, this contract may be renewed for a second and third year under the identical price, terms, and conditions upon mutual consent of both parties approved in writing by both parties no later than 90 days prior to the expiration of the existing contract;
 19. Both parties agree that this contract shall be in full force and effect from November 1, 2015 to October 31, 2016.

WARRANTIES AND REPRESENTATIONS

The contractor shall at all times during the term of this agreement comply with all federal, state, county, and municipal laws, ordinances, and regulations. The contractor shall not discriminate against any employee or applicant due to sex, race, color, creed, national origin or ancestry. The contractor certifies that it is eligible to perform this contract under federal, state, and local law, is not now and has never been debarred from performing federal or state government contracts and that all subcontractors used in the performance of this contract have the same qualifications.

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

PENALTIES, TERMINATION AND DEFAULT

Time is of the essence in providing the services required in this agreement as set out in Exhibit A. As such, the contractor shall be assessed liquidated damages in the amount of \$5000 per calendar day for each day in which contract activities extend beyond the maximum allowable time established.

This contract may be terminated by the awarding authority at any time for the convenience of the counties in Region 6 for any reason. Any county who has activated the services of the contractor through a Notice to Proceed agrees to pay the contractor for all work completed through the termination date.

This contract shall be terminated for cause if the contractor defaults in the performance of any of the terms of this agreement, including but not limited to: unsatisfactory job performance or progress, defective work, disputed work, failure to comply with material provisions of the contract, third party claims filed or reasonable evidence that a claim will be filed, or other reasonable cause; or otherwise fails to cure any other deficiency identified by an activating county within 24 hours of delivery of notice of said deficiency. Under the terms of this agreement, the contractor is in default if he or she fails to respond to a Notice to Proceed issued by any of the counties in Region 6 or fails to complete a project in any county in Region 6 after work has begun pursuant to a Notice to Proceed issued by said county. Calhoun County and all counties in Region 6 retain all other legal or equitable rights or remedies existing as a result of said default,

including but not limited to any legal process necessary to obtain any sureties securing this contract. Any reasonable attorney's fee incurred in enforcing this contract will not exceed 5% of said contract price.

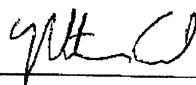
This contract is binding upon and inures to the benefit of the counties in Region 6 and is the whole agreement of the parties and governed by the law of the State of Alabama. There shall be no change orders or modifications of this agreement or services to be performed pursuant to Exhibit A by the contractor or any of the counties in Region 6.

The contractor shall save and hold harmless all counties in Region 6, State of Alabama, the U.S. Government, their respective employees, officials and agents from and against all liability, claims and demands on account of personal injuries (including without limitation workmen's compensation and death claims) or property loss or damages of any kind whatsoever, which arise out of or be in any manner connected with, or are claimed to arise out of or be in any manner connected with, the performance of this agreement, regardless of whether such injury, loss or damage shall be caused by, or be claimed to be caused by, the negligence or other fault of the contractor, any subcontractor, agent or employee.

Executed on this the 8th day of October, 2015.



J.D. Hess, Chairperson
Calhoun County Commission



Vice President, Thompson Consulting Services
Nate Counsell

ORDINANCE NUMBER 2647

**AN ORDINANCE AUTHORIZING THE MAYOR AND CITY
MANAGER TO EXECUTE AND DELIVER AN AGREEMENT
FOR COST SHARING FOR THE GRANTS MILL ROAD
CORRIDOR STUDY**

THIS ORDINANCE NUMBER 2647 is approved and adopted by the City Council of the City of Vestavia Hills, Alabama on this the 14th day of March, 2016.

WITNESSETH THESE RECITALS:

WHEREAS, Birmingham, Hoover, Irondale, Leeds, Mountain Brook, Vestavia Hills, Birmingham Water Works Board, Jefferson County, and Shelby County desire to enter into this Agreement to fund a study of the Grants Mill Road Corridor (“Grants Mill Road Corridor Study”); and

WHEREAS, the purpose of this study is to consider alternative corridors to realign Grants Mill Road from SR-119 to I-459 with a new facility capable of carrying the design year projected traffic volumes at speeds of 55 mph (the “Project”); and

WHEREAS, the study will look at multiple corridors, each approximately 1000 feet wide, for possible alternative locations; and

WHEREAS, the desired outcome of the study is to present a preferred alternate route for the potential relocation of Grants Mill Road between I-459 and SR-119 (Cahaba Valley Road); and

WHEREAS, the Project encompasses multiple jurisdictions, including Birmingham, Hoover, Irondale, Leeds, Mountain Brook, Vestavia Hills, Jefferson County and Shelby County; and

WHEREAS, the parties desire to divide the Preliminary Engineering and Consultant costs of the Project, a copy of which is marked as “Exhibit A”, attached to and incorporated into this Ordinance Number 2647 as though written fully therein; and

WHEREAS, funding for said Project shall be expensed to the Capital Reserve Fund; and

WHEREAS, the Mayor and City Council find it is in the best public interest to participate in said Agreement.

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

1. The Mayor and City Manager are hereby authorized to execute and deliver said Agreement pursuant to the terms and conditions as detailed in the attached Exhibit A; and
2. Funding for said Project shall be expensed to the City's Capital Reserve Fund; and
3. This Ordinance Number 2647 is conditioned upon successful execution by all jurisdictions; and
4. This Ordinance Number 2647 is effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 14th day of March, 2016.

Steve Ammons
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk

JEFFERSON COUNTY)
STATE OF ALABAMA)

AGREEMENT
TO
SHARE RESPONSIBILITIES
(Cost Sharing Agreement)
Grants Mill Road Corridor Study

The CITY OF BIRMINGHAM, ALABAMA (Birmingham), a municipal corporation, the CITY OF HOOVER, ALABAMA (Hoover), a municipal corporation, the CITY OF IRONDALE, ALABAMA (Irondale), a municipal corporation, the CITY OF LEEDS, ALABAMA (Leeds), a municipal corporation, the CITY OF MOUNTAIN BROOK, ALABAMA (Mt. Brook), a municipal corporation, the CITY OF VESTAVIA HILLS, ALABAMA (Vestavia), a municipal corporation, the BIRMINGHAM WATER WORKS BOARD (BWVB), a municipal board, JEFFERSON COUNTY, ALABAMA (Jeff.Co.) and SHELBY COUNTY, ALABAMA (Shelby.Co.), enter into this agreement on the _____ day of _____, 2015. The provisions of this agreement shall become effective _____, 2015.

WHEREAS, Birmingham, Hoover, Irondale, Leeds, Mountain Brook, Vestavia Hills, BWVB, Jeff.Co. and Shelby.Co. desire to enter into this Agreement to fund a study of the Grants Mill Road Corridor (“**Grants Mill Road Corridor Study**”).

WHEREAS, the purpose of this Study is to consider alternative corridors to realign Grants Mill Road from SR-119 to I-459 with a new facility capable of carrying the design year projected traffic volumes at speeds of 55 mph (the “**Project**”).

WHEREAS, the study will look at multiple corridors, each approximately 1000 feet wide, for possible alternative locations.

WHEREAS, the desired outcome of the study is to present a preferred alternate route for the potential relocation of Grants Mill Road between I-459 and SR-119 (**Cahaba Valley Road**).

WHEREAS, the **Project** encompasses multiple jurisdictions, including Birmingham, Hoover, Irondale, Leeds, Mountain Brook, and Vestavia Hills, Jeff.Co. and Shelby.Co.; and

WHEREAS, the parties desire to divide the Preliminary Engineering and Consultant costs of the **Project** as follows: Birmingham will contribute the sum of \$560,000 and each other entity will contribute the sum of \$60,000. Payments will be due in two (2) equal installments in FY 2014-2015 and FY 2015-2016. The first payment will be due and payable in the calendar month following the execution of this Agreement and the second payment will be due and payable one (1) year thereafter by each governmental entity that is a party hereto. The payment due from each governmental entity may be adjusted downward after the selection of the Firm that will complete the Grants Mill Road Corridor Study has been made and the cost of same ascertained; however, the reduction shall be limited on a pro rata basis (1/9th) of \$60,000; and

WHEREAS, the Alabama Legislature adopted Alabama Code §41-16-50(b) which provides in pertinent part, that:

(b) The governing bodies of two or more contracting agencies, as enumerated in subsection (a), or the governing bodies of two or more counties, or the governing bodies of two or more city or county boards of education, may provide, by joint agreement, for the purchase of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property for use by their respective agencies. The agreement shall be entered into by similar ordinances, in the case of municipalities, or resolutions, in the case of other contracting agencies, adopted by each of the participating governing bodies, which shall set forth the categories of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property to be purchased, the manner of advertising for bids and the awarding of contracts, the method of payment by each participating contracting agency, and other matters deemed necessary to carry out the purposes of the agreement. Each contracting agency's share of expenditures for purchases under any agreement shall be appropriated and paid in the manner set forth in the agreement and in the same manner as for other expenses of the contracting agency. The contracting agencies entering into a joint agreement, as herein permitted, may designate a joint purchasing or bidding agent, and the agent shall comply with this article. Purchases, contracts, or agreements made pursuant to a joint purchasing or bidding agreement shall be subject to all terms and conditions of this article.

; and

WHEREAS, the Alabama Legislature adopted Alabama Code §11-102-1 which provides that:

Except as otherwise provided in this chapter or as otherwise prohibited by law, any county or incorporated municipality of the State of Alabama may enter into a written contract with any one or more counties or incorporated municipalities for the joint exercise of any power or service that state or local law authorizes each of the contracting entities to exercise individually. For purposes of this chapter, it is sufficient if each of the contracting entities has the authority to exercise or

perform the power or service which is the subject of the contract regardless of the manner in which the power or service shall be exercised or performed, provided that at least one of the contracting parties has the authority to exercise the power or service in the manner agreed upon by the parties. The joint contract may provide for the power or service to be exercised by one or more entities on behalf of the others or jointly by the entities.

; and

WHEREAS, Act 1969-916 of the Acts of Alabama authorizes Jefferson County and the municipalities other governmental subdivisions and public corporations in Jefferson County to make the most efficient use of their powers by enabling them to cooperate with the state, the federal government and with each other on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and developments of the county and municipalities and other governmental units and agencies therein; and

WHEREAS, all parties find that it is in the public interest that the parties enter into a Cost Sharing Agreement in accordance with Alabama Code §41-16-50(b), §11-102-1, *et seq.*, and Act 1969-916 of the Acts of Alabama, in order to fund a study of the Grants Mill Road Corridor the purpose of determining possible solutions to the traffic congestion existing in the U.S. Highway 280 corridor between SR 119 and I-459 by considering alternative corridors to realign Grants Mill Road from SR-119 to I-459 with a new facility capable of carrying the design year projected traffic volumes at speeds of 55 mph.

IN CONSIDERATION OF THE PREMISES stated herein the parties mutually agree as follows:

- I. **PURPOSE:** The Parties agree to jointly undertake the **Project** as a collaborative effort, by the governmental entities that are signatory hereto, for the purpose of determining possible solutions to the traffic congestion existing in the U.S. Highway 280 corridor between SR 119 and I-459 by considering alternative corridors to realign Grants Mill Road from SR-119 to I-459 with a new facility capable of carrying the design year projected traffic volumes at speeds of 55 mph. The study will look at multiple corridors, each approximately 1000 feet wide, for possible alternative locations. The desired outcome of the study is to present a preferred alternate route for the potential relocation of grants Mill Road between I-459 and SR-119 (Cahaba Valley Road).
- II. **BIDDING:** The parties have authorized this agreement pursuant to similar ordinances passed by each municipality and a similar resolution passed by each County and BWWB, adopted by the governing body of each party, which sets forth the categories of labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property to be purchased, the manner of advertising for bids and the awarding of

contracts, the method of payment by each participating contracting agency, and other matters deemed necessary to carry out the purposes of this agreement. The Parties agree to the following:

- a. Birmingham will prepare the Request For Proposal (RFP) and the list of qualified consultants to receive the RFP. Birmingham will assume responsibility for the solicitation of proposals from qualified engineering consultants for the **Project**.
- b. Birmingham will select an engineering consultant, prepare the scope of work, and negotiate the fee for the production of construction plans. The selection will be made pursuant to the Alabama Department of Transportation's approved process for the provision of professional services.
- c. The aggregate cost of the **Project** shall not exceed \$1,040,000.00. Birmingham will contribute the sum of \$560,000.00 and each other entity will contribute the sum of \$60,000.00. Payments will be due in two (2) equal installments in FY 2015-2016 and FY 2016-2017. The first payment will be due and payable in the calendar month following execution of this Agreement and the second payment will be due and payable one (1) year thereafter by each governmental entity that is a party hereto. The payment due from each party may be adjusted downward after the selection of the Firm that will complete the Grants Mill Road Corridor Study has been made and the costs of the **Project** ascertained; however, any such reduction shall be limited on a pro rata basis (1/9th) of \$60,000.00.
- d. Each parties' share of expenditures for purchases under this agreement shall be appropriated and paid in the manner set forth in this agreement and in the same manner as for other expenses of the entity.
- e. All advertising costs incurred by Birmingham on behalf of the Cost Sharing Agreement shall be paid in equal proportion from the funds provided by each party.
- f. This agreement shall be subject to all terms and conditions of the applicable Alabama Bid Laws.

III. **TERM:** The duration of this contract shall not exceed three years from the date of its final execution or end of the **Project**, whichever first occurs.

IV. **IMPLEMENTATION:** The parties agree as follows:

- a. Birmingham will assume responsibility for the management of the **Project** and will be the **Project** Coordinator.

- b. The contact person for the City of Birmingham will be:

Mr. Andre Bittas
Planning Engineering and Permits
City of Birmingham, City Hall, Room 207
710 20th Street North
Birmingham, AL 35203
andre.bittas@birminghamal.gov
(205) 254-2336

- c. The parties expressly agree that the parties do not assume any risk or future liability, or any future responsibility for any portion of **Project** not located within the party's jurisdiction.
- d. Except as expressly provided in this agreement, no party to the contract shall have any power to incur any debt which shall become the responsibility of any other contracting party.
- e. Except as specifically provided in this agreement, the execution of this agreement or the performance of any act pursuant to the provisions thereof shall not be deemed or construed to have the effect of creating between the parties the relationship of principal or agent or of partnership or of joint venture.
- f. Except as otherwise provided by law and as limited by this agreement between the parties, any entity which contracts to perform or exercise any service or power pursuant to this chapter shall have the full power and authority to act within the jurisdiction of all contracting entities to the extent necessary to carry out the purposes of the contract.
- g. This Cost Sharing Agreement shall not take effect until it has been approved by the governing body of each of the contracting municipalities. Approval by a municipal governing body shall be by adoption of an ordinance of general and permanent operation. Approval by a county governing body, other governmental subdivisions and public corporations shall be by adoption of a resolution. Each party to this agreement shall also adopt all ordinances, resolutions, or policies necessary to authorize the other contracting entities to carry out their contractual duties and responsibilities.
- h. Prior its entry into force, the executed Agreement between the parties shall be filed by Birmingham with the Judge of Probate of Jefferson County, Alabama and with the Alabama Secretary of State.

V. IMMIGRATION LAW COMPLIANCE:

(a) Parties represent and warrant that they do not knowingly employ, hire for employment, or continue to employ, in Alabama, an “unauthorized alien,” as defined by the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, §31-13-1, *et seq.*, Code of Alabama 1975, as amended (the “Act”).

(b) Parties represent and warrant that they will enroll in the E-Verify program prior to performing any work on the **Project** in Alabama and shall provide documentation establishing that the Party is enrolled in the E-Verify program. During the performance of this Agreement, Parties shall participate in the E-Verify program as required under the terms of the Act and shall verify every employee in Alabama that is required to be verified according to the applicable federal rules and regulations.

(c) Parties agree to comply with all applicable provisions of the Act with respect to its subcontractors by entering into an agreement with or by obtaining an affidavit from such subcontractors providing work for the Party on the **Project** in Alabama, that such subcontractors are in compliance with the Act with respect to their participation in the E-verify program. Parties represent and warrant that they shall not hire, retain or contract with any subcontractor to work on the **Project** in Alabama which the Party knows is not in compliance with the Act.

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

VI. TERMINATION:

Any party hereto may terminate this Agreement at any time prior to the first payment by giving thirty (30) days’ notice of the intention to do so to the other parties. Such notice shall be sent to the governing body of the other parties.

VII. SEVERABILITY: If any provision of this agreement is declared by a court having jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular provision held to be invalid.

VIII. GOVERNING LAW: This agreement shall be governed by and construed in accordance with the laws of the State of Alabama as interpreted by Alabama Courts.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representative as reflected below.

CITY OF BIRMINGHAM, ALABAMA

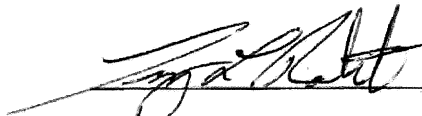
Date

BY: _____
William A. Bell, Sr., Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM BY LAW DEPARTMENT:

 12 August 2015
Assistant City Attorney / Date

CITY OF HOOVER, ALABAMA

Date

BY: _____
Gary Ivey, Mayor

ATTEST:

City Clerk

CITY OF IRONDALE, ALABAMA

Date

BY: _____
Tommy Joe Alexander, Mayor

ATTEST:

City Clerk

CITY OF LEEDS, ALABAMA

Date

BY: _____
David Miller, Mayor

ATTEST:

City Clerk

CITY OF MOUNTAIN BROOK, ALABAMA

Date

BY: _____
Lawrence Terry Oden, Mayor

ATTEST:

City Clerk

CITY OF VESTAVIA HILLS, ALABAMA

Date

BY: _____
Alberto C. Zaragoza, Mayor

ATTEST:

City Clerk

Date

BY: _____
Jeff Downes, City Manager

ATTEST:

City Clerk

BIRMINGHAM WATER WORKS BOARD

Date

BY: _____

Ronald A. Mims, President
Birmingham Water Works Board

ATTEST:

JEFFERSON COUNTY, ALABAMA

Date

BY: _____

James A. (Jimmie) Stephens, President
Jefferson County Commission

ATTEST:

SHELBY COUNTY, ALABAMA

Date

BY: _____

Rick Shepherd, Chairman
Shelby County Commission

ATTEST:

RESOLUTION NUMBER 4805

A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AND DELIVER AN AGREEMENT WITH SAIN ASSOCIATES FOR PROFESSIONAL TRAFFIC ENGINEERING SERVICES ASSOCIATED WITH A CORRIDOR STUDY OF A DEFINED SEGMENT OF DOLLY RIDGE ROAD FROM E.A. HOLLIS DRIVE TO PUMP HOUSE ROAD/CAHABA HEIGHTS ROAD

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 Sain Associates for professional traffic engineering services associated with a corridor study of a defined segment of Dolly Ridge Road from E.A. Hollis Drive to Pump House Road/Cahaba Heights Road in an amount not to exceed \$9,500; and
2. A copy of said agreement is marked as Exhibit "A" attached and incorporated into this Resolution Number 4805 as though written fully therein; and
3. Funding for said services shall be expensed to the City's Capital Reserve Fund; and
4. This Resolution Number 4805 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 14th day of March, 2016.

Steve Ammons
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk



WORK AUTHORIZATION

DATE: February 12, 2016

TO: Jeff Downes
City of Vestavia Hills
513 Montgomery Highway
Vestavia Hills, AL 35216

FROM: Jeff Stephenson, P.E., PTOE
Jim Meads, P.E.

SUBJECT: **Dolly Ridge Road Corridor Study**
Vestavia Hills, AL
SA# 160034

I. SCOPE:

Sain Associates will provide professional traffic engineering services associated with a corridor study of a defined segment of Dolly Ridge Road in Vestavia Hills. Study boundaries and requirements for this scope and fee are based upon information provided by the City of Vestavia Hills.

General scope of services

Corridor Study

General study area boundaries

Dolly Ridge Road from E.A. Hollis Drive to Pumphouse Road/Cahaba Heights Road

(approximately 0.3 miles)

Description of scope of services

Corridor Study \$9,500 (fixed fee)

- Field Review – We will conduct a review of the project corridor to inventory existing conditions within the study area. Items to be inventoried include but are not limited to: visible utilities, right-of-way markers and constraints, drainage structures, land uses, sight distance obstructions, and traffic patterns. If possible, we would like to conduct a brief on-site meeting with city staff during this field review.
- Traffic volume counts – We will collect one 24-hour weekday machine traffic count (volume, speed, and classification) for each direction of Dolly Ridge Road within the study area. We will supplement our traffic analyses with turning movement traffic counts taken by Sain in May 2015 for a previous City-sponsored study. The cost to conduct the 24-hour weekday machine traffic count is included in our fee proposal.

Work Authorization
Dolly Ridge Road Corridor Study
February 12, 2016
Page 2

- Future development access plan consideration – We will review information to be provided by the City for future development planned on the west side of Dolly Ridge Road within the study corridor and will develop a conceptual plan for access to Dolly Ridge Road.
- Bicycle and pedestrian due diligence – We will conduct research to determine bicycle and pedestrian plans and/or route designations within the study corridor.
- Utility and ROW due diligence – We will identify utilities and present ROW within the study corridor based on available GIS utility data and visible field location.
- Drainage facility due diligence – We will identify drainage facilities within the study corridor based on available GIS utility data and visible field location.
- Recommended improvements & conceptual sketch – We will use field observations, traffic counts, planned development, utility and ROW information, and drainage facility information to develop improvement recommendations within the study corridor. We will provide a conceptual drawing to graphically represent our recommended improvements. We will prepare a preliminary opinion of probable cost for all recommended improvements.
- Technical memorandum – Our efforts will be documented in a technical memorandum which will be submitted to the city for review and approval.
- Meetings – We are available to attend meetings, hearings, and worksessions throughout the duration of the project. For the purposes of this study, we have assumed attendance at up to two meetings will be required. We propose attendance at any additional meetings be undertaken on an hourly basis per the attached terms and conditions, with your authorization.

Scope of services not included

- Surveying and engineering design
- Drainage analysis
- Bike/Pedestrian LOS analysis

If it is determined these services are needed as the corridor study progresses, we are available to provide these services, with additional authorization.

II. **WORK REQUESTED BY:** Jeff Downes – City of Vestavia Hills

III. **BUDGET:** Fixed fee as shown below, including expenses (i.e. printing, shipping, and travel).

Corridor Study\$9,500

IV. **STATUS:** Available to start work immediately upon receipt of a notice to proceed.

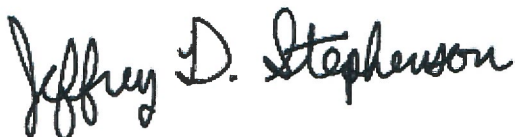
If this scope and fee proposal meets your approval, please treat this document as our contract to provide the aforementioned scope of services by signing and returning to us.

Work Authorization
Dolly Ridge Road Corridor Study
February 12, 2016
Page 3

This contract is subject to the enclosed Terms and Conditions. All subsequent services required by you outside the scope of services specified will be performed on a time and materials basis according to the schedule of rates enclosed.

APPROVED:

SAIN ASSOCIATES, INC.



Jeffrey D. Stephenson, P.E., PTOE
Team Leader | Transportation

ACCEPTED:

City of Vestavia Hills

BY: _____
Authorized Representative

Printed Name/Title



James A. Meads, P.E.
President | CEO

Date

Enclosures: Terms & Conditions (Schedule 2016)

SAIN ASSOCIATES, INC. TERMS AND CONDITIONS

Rates:

Principal	\$155.00 - \$175.00 per Hour
Engineer/Planner	\$95.00 - \$145.00 per Hour
GIS Professional	\$127.50 per Hour
Designer	\$79.00 - \$112.00 per Hour
Administrative Support	\$60.00 per Hour

Reimbursable Expenses

Printing, contract carrier service, and travel expenses are ~~not~~ included within our basic fee ~~and will be passed along to you at our cost, plus 10%.~~

Payment

To be made monthly based upon the percentage of work completed and invoiced to you. Your obligation to pay for services rendered hereunder is in no way dependent upon your ability to obtain financing, to obtain payment from a third party, or to obtain approval of any governmental or regulatory agencies, or upon your successful completion of the project. If any payment due for services and expenses hereunder is not made in full within thirty (30) days after receipt of invoice, the amounts due Sain Associates, Inc., shall include a charge at the rate of 1½% per month from said thirtieth (30th) day, plus attorney's fees for collection in the amount of 1/3 of the outstanding balance or such greater amount as the court finds reasonable. In addition, we reserve the right to suspend services under this agreement until receipt of payment in full for all amounts due for services rendered and expenses incurred.

AL Immigration Law Compliance

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

Standard of Care

The standard of care for all professional services performed or furnished by Sain Associates under this Agreement will be the skill and care used by members of Consultant's profession practicing under similar circumstances at the same time and in the same locality. Sain makes no warranties, express or implied, under this Agreement or otherwise, in connection with Sain's services.

Limitation of Remedies

Liability of remedies of Sain Associates, Inc. resulting from errors, omissions, or the negligence of Sain Associates, Inc., its agents or employees, pursuant to work under this agreement shall not exceed the lesser of the value of engineering or surveying services required to correct the deficiency or the basic consulting fee for work covered hereunder or the actual cost of the remedies. This provision is being agreed to as a result of the fees being charged.

Dispute Resolution

Sain Associates agree that if a dispute arises out of or relates to this contract, the parties will attempt to settle the dispute through good faith negotiations. If direct negotiations do not resolve the dispute, the parties agree to endeavor to settle the dispute by mediation prior to the initiation of any legal action unless delay in initiating legal action would irrevocably prejudice one of the parties. Mediation to take place in County where project is located and if mediation cannot be agreed upon by parties then it is agreed that AAA (American Arbitration Association) will appoint mediator and the parties agree to split cost of mediator 50 – 50.

Indemnification

Client and Consultant each agree to indemnify and hold the other harmless, and their respective officers, employees, agents and representatives, from and against liability for all claims, losses, damages and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of Client and Consultant, they shall be borne by each party in proportion to its negligence.

Force Majeure

Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence.

Termination of Contract

Client may terminate this Agreement with seven days prior written notice to Consultant for convenience or cause. Consultant may terminate this Agreement for cause with seven days prior written notice to Client. Failure of Client to make payments when due shall be cause for suspension of services or, ultimately, termination, unless and until Consultant has been paid in full all amounts due for services, expenses and other related charges.

Ownership of Documents

All documents prepared or furnished by Consultant pursuant to this Agreement are instruments of Consultant's professional service, and Consultant shall retain an ownership and property interest therein. Consultant grants Client a license to use instruments of Consultant's professional service for the purpose of constructing, occupying and maintaining the Project. Reuse or modification of any such documents by Client, without Consultant's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold Consultant harmless from all claims, damages and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.

Schedule 2016



RESOLUTION NUMBER 4807

**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 “Exhibit B”; and

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

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

1. The City Manager is hereby authorized to sell and/or dispose of the above-referenced surplus personal property; and
2. This Resolution Number 4807 shall become effective immediately upon adoption and approval.

DONE, ORDERED, APPROVED and ADOPTED on this the 14th day of March, 2016.

Steve Ammons
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk

Exhibit A

02/26/16

To: Rebecca Leavings

From: Sgt. Gaston, Officer Wilson

Re: Surplus City Property

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

- 1992 Honda Accord VIN# 1HGCB7655NL008721
- 3 Bullard Thermal Imager S/N TT1-4591, VH Property # 16041 S/N TT1-4593, VH Property # 16028 S/N TT1-4590

Please contact me with any questions or concerns.

Thanks, Sgt. Gaston ext.#1137

Officer Wilson ext.#1110

Exhibit B

General Information

Innovative Maintenance Systems

81-5086 - 1999 Jeep Cherokee

Year: 1999
Make: Jeep
Model: Cherokee
Mileage: 113,884
Unit #: 81-5086
Serial #: 1J4FF2852XL565086
Type: SUV
Tag #
Operator: ,

Notes:

(click to define)
(click to define)
(click to define)
(click to define)
Oil Filter Type:

Equipment Information

Status: Out of service
Schedule: Park Rec. Vehicles

61-3202 - 2004 Ford F-350 XL

Year: 2004
Make: Ford
Model: F-350 XL Quad Cab
Mileage: 114,981
Unit #: 61-3202
Serial #: 1FDWW36S24EA73202
Type: Russell
Tag #
Operator: ,

Notes:

(click to define)
(click to define)
(click to define)
(click to define)
Oil Filter Type:

Equipment Information

Status: Out of service
Schedule: Public Works Vehicles

RESOLUTION NUMBER 4809

A RESOLUTION AUTHORIZING THE MAYOR AND CITY MANAGER TO ENTER INTO AN AGREEMENT WITH HOLCOMBE NORTON PARTNERS, INC. FOR ARCHITECTURAL SERVICES FOR SICARD HOLLOW ATHLETIC COMPLEX PARK IMPROVEMENTS

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

1. The Mayor and City Manager are hereby authorized to execute an agreement with Holcombe Norton Partners, Inc. for architectural services for proposed Sicard Hollow Athletic Complex Park Improvements in an amount not to exceed \$80,000.00; and
2. The City Council adopted and approved Resolution Number 4783 authorizing the City Manager to fund the City's portion of the second phase of the SHAC park improvements; and
3. A copy of said agreement is attached to and incorporated into this Resolution Number 4809 as though written fully therein; and
4. This Resolution Number 4809 shall become effective immediately upon adoption and approval.

DONE, ORDERED, ADOPTED and APPROVED this the 14th day of March, 2016.

Steve Ammons
Mayor Pro-Tem

ATTESTED BY:

Rebecca Leavings
City Clerk



AIA[®] Document B101[™] – 2007

Resolution 4809
Exhibit A Page 1

Standard Form of Agreement Between Owner and Architect

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

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

City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, AL 35216

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

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

Holcombe Norton Partners, Inc.
1914 28th Avenue South
Birmingham, AL 35209

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

Sicard Hollow Athletic Complex
Park Improvements

The Owner and Architect agree as follows.

TABLE OF ARTICLES

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

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

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

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

See Attached Proposal

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

- .1 Commencement of construction date:

March 2016

- .2 Substantial Completion date:

August 2016

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

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

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

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

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

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

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

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

.1 General Liability

\$1,000,000 / \$2,000,000 Aggregate

.2 Automobile Liability

\$1,000,000

.3 Workers' Compensation

\$1,000,000

.4 Professional Liability

\$3,000,000

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

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

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

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

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

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

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

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

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

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

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

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

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

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

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

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

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

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

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

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

Init.

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

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

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

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

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

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

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

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

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

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

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

§ 3.5.2 COMPETITIVE BIDDING

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

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

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

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

§ 3.5.3 NEGOTIATED PROPOSALS

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

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

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

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

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

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

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

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

§ 3.6.2 EVALUATIONS OF THE WORK

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

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

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

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

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

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

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

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

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

§ 3.6.4 SUBMITTALS

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

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

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

entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

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

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

§ 3.6.5 CHANGES IN THE WORK

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

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

§ 3.6.6 PROJECT COMPLETION

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

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

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

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

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

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming (B202™-2009)		
§ 4.1.2 Multiple preliminary designs		
§ 4.1.3 Measured drawings		
§ 4.1.4 Existing facilities surveys		
§ 4.1.5 Site Evaluation and Planning (B203™-2007)		
§ 4.1.6 Building Information Modeling (E202™-2008)		
§ 4.1.7 Civil engineering		
§ 4.1.8 Landscape design		
§ 4.1.9 Architectural Interior Design (B252™-2007)		
§ 4.1.10 Value Analysis (B204™-2007)		
§ 4.1.11 Detailed cost estimating		
§ 4.1.12 On-site Project Representation (B207™-2008)		
§ 4.1.13 Conformed construction documents		
§ 4.1.14 As-Designed Record drawings		
§ 4.1.15 As-Constructed Record drawings		
§ 4.1.16 Post occupancy evaluation		
§ 4.1.17 Facility Support Services (B210™-2007)		
§ 4.1.18 Tenant-related services		
§ 4.1.19 Coordination of Owner's consultants		
§ 4.1.20 Telecommunications/data design		
§ 4.1.21 Security Evaluation and Planning (B206™-2007)		
§ 4.1.22 Commissioning (B211™-2007)		
§ 4.1.23 Extensive environmentally responsible design		
§ 4.1.24 LEED® Certification (B214™-2012)		
§ 4.1.25 Fast-track design services		
§ 4.1.26 Historic Preservation (B205™-2007)		
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™-2007)		

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

N/A

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

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

- 1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- 2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;

init.

- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

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

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

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

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

§ 4.3.4 If the services covered by this Agreement have not been completed within Eighteen (18) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land,

rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

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

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

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

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

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

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

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

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

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

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

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

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

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

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

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

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

§ 8.2 MEDIATION

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

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

proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

Arbitration pursuant to Section 8.3 of this Agreement

Litigation in a court of competent jurisdiction

Other (Specify)

§ 8.3 ARBITRATION

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

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

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

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

§ 8.3.4 CONSOLIDATION OR JOINDER

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

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

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

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

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

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

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

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

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

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

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

ARTICLE 10 MISCELLANEOUS PROVISIONS

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

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

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the

Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

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

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

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

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

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

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

Eighty Thousand Dollars (\$80,000.00)

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

N/A

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

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

See Attached Proposal

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

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

Schematic Design Phase	percent (<u>0</u>	%)
Design Development Phase	percent (<u>0</u>	%)
Construction Documents Phase	percent (<u>50</u>	%)
Bidding or Negotiation Phase	percent (<u>15</u>	%)
Construction Phase	percent (<u>35</u>	%)

Total Basic Compensation	one hundred	percent (100	%)
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§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect’s consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect’s and Architect’s consultants’ normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Attached Proposal

Employee or Category	Rate
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§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

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

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

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect’s consultants plus percent (%) of the expenses incurred. N/A

§ 11.9 COMPENSATION FOR USE OF ARCHITECT’S INSTRUMENTS OF SERVICE

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

§ 11.10 PAYMENTS TO THE ARCHITECT

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

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

(Insert rate of monthly or annual interest agreed upon.)

%

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

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

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

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

ARTICLE 13 SCOPE OF THE AGREEMENT

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

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

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

See Attached Proposal

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

OWNER

ARCHITECT

(Signature)

(Signature)

(Printed name and title)

(Printed name and title)

Init.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Thomas R. Holcombe, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification 13:12:12 on 02/08/2016 under Order No. 4662314937 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document B101™ - 2007, Standard Form of Agreement Between Owner and Architect, as published by the AIA in its software, other than changes shown in the attached final document by underscoring added text and striking over deleted text.

(Signed)

(Title)

(Dated)

**EXCERPTS FROM THE MINUTES OF A REGULAR MEETING OF
THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA**

The City Council of the City of Vestavia Hills met in regular public session at the City Hall in the City of Vestavia Hills, Alabama, at 5:00 p.m. on March 14, 2016. The meeting was called to order by the Mayor, and the roll was called with the following results:

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

Absent: _____

* * *

The Mayor stated that a quorum was present and that the meeting was open for the transaction of business.

* * *

Thereupon, the following ordinance was introduced in writing by the Mayor, and considered by the City Council:

RESOLUTION NO. 4808

A RESOLUTION AUTHORIZING A SPECIAL ECONOMIC DEVELOPMENT AGREEMENT
BY THE CITY OF VESTAVIA HILLS, ALABAMA
AND
SCP AT LIBERTY PARK, LLC

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF VESTAVIA HILLS, ALABAMA (THE "COUNCIL"), AS GOVERNING BODY OF THE CITY OF VESTAVIA HILLS, ALABAMA (the "Municipality"), as follows:

Section 1. The Council, upon evidence duly presented to and considered by it, has found and determined, and does hereby find, determine and declare as follows:

(a) Pursuant to the applicable laws of the State of Alabama, the Municipality and SCP at Liberty Park, LLC (the "Owner") have prepared that certain Special Economic Development Agreement to be dated the date of delivery (the "Special Economic Development Agreement"), as set forth hereinafter, for the purposes referenced therein.

(b) The Municipality is without absolute authority or power under any local constitutional amendment to do any of the actions or undertakings referenced in Amendment No. 772 of the Constitution of Alabama of 1901, as amended ("Amendment No. 772").

(c) The Municipality is authorized under Amendment No. 772 to become indebted, and to issue obligations as referenced therein, upon the full faith and credit of the Municipality, to a principal amount not exceeding 50% of the assessed value of taxable property therein, as determined for state taxation, in furtherance of the powers and authorities granted in Amendment No. 772.

(d) Pursuant to, and for the purposes of, Amendment No. 772, it is necessary, desirable and in the public interest for the Municipality to grant public funds for the economic development of the Municipality, and for such purposes to issue its Limited Obligation Economic Development Revenue Warrant in maximum principal amount of \$575,000 (the "Warrant"), pursuant to the terms of the Special Economic Development Agreement.

(e) The expenditure of public funds for the purposes specified in the Special Economic Development Agreement will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(f) (1) On March 4, 2016, the Municipality caused to be published in *The Birmingham News*, which newspaper has the largest circulation in the Municipality, the notice required by Amendment No. 772(c)(2), a true and correct copy of which notice is set forth as follows:

**LEGAL NOTICE OF PUBLIC HEARING
OF
CITY COUNCIL OF VESTAVIA HILLS, ALABAMA**

Notice is hereby given that the City Council (the "Council") of the City of Vestavia Hills, Alabama (the "City") will meet in public session at 5:00 p.m. on March 14, 2016 at City Hall in the City of Vestavia Hills, Alabama for the purpose of considering the transaction of business that may properly come before the Council, such business to include, but not be limited to, the authorization by the Council, pursuant to Amendment No. 772 of the Constitution of Alabama of 1901, as amended, of a resolution (the "Resolution") approving the execution and delivery of a Special Economic Development Agreement (the "City Agreement") by the City and SCP at Liberty Park, LLC, an Alabama limited liability company (the "Developer"), to be dated the date of delivery, pursuant to which City Agreement the City shall issue its Limited Obligation Economic Development Revenue Warrant in an expected principal amount of \$575,000 (the "City Warrant") to the Developer, for purposes referenced in the City Agreement.

The City Warrant shall evidence the agreement of the City to make economic development grants to the Developer (based solely upon net sales tax proceeds received by the City from the Developer in excess of a stated base amount, for a period of ten years), for the purpose of promoting the economic development of the City and in consideration of the establishment and operation of commercial and related facilities of approximately 9,000 square feet in the Liberty Park area of the City.

The City seeks to achieve, by undertaking its obligations pursuant to the City Agreement and the Resolution, to promote the local economic and industrial development of the City, to increase employment in the City, and to increase the tax and revenue base of the City.

The business entity to whom or for whose benefit the City propose to lend its credit or grant public funds or thing of value is the Developer.

All interested persons may examine and review the City Agreement, the Resolution, and all relevant documents pursuant to which the City Warrant is to be issued and secured, and make copies thereof at personal expense, at the offices of the City Manager during normal business hours, before and after the meeting referenced herein.

Further information concerning the information in this notice can be obtained from the City Manager at the offices thereof during normal business hours.

(2) The information set forth in said notice is true and correct.

(3) Publication of said notice is hereby ratified and confirmed.

(h) (1) The assessed valuation of the taxable property in the Municipality for the preceding fiscal year (ending September 30, 2014 and on the basis of which taxes became due and payable on October 1, 2015) was not less than \$642,000,000.

(2) The total indebtedness of the Municipality chargeable against the debt limitation for the Municipality prescribed by Section 225 of the Constitution of Alabama of 1901, as amended, (which indebtedness does not include the Warrant issued under Amendment No. 772), is not more than twenty percent of said assessed valuation.

(3) The total indebtedness of the Municipality chargeable against the debt limitation for the Municipality prescribed by Amendment No. 772(a)(4) (which indebtedness does include the Warrant), is not more than fifty percent of said assessed valuation.

Section 2. The Council does hereby approve, adopt, authorize, direct, ratify and confirm:

(a) the agreements, covenants, and undertakings of the Municipality set forth in the Special Economic Development Agreement, and

(b) the terms and provisions of the Special Economic Development Agreement, in substantially the form and of substantially the content as set forth as follows, with such changes thereto (by addition or deletion) as the President shall approve, which approval shall be conclusively evidenced by execution and delivery of the Special Economic Development Agreement as hereinafter provided:

Section 3.

(a) The Mayor and the City Manager are each hereby authorized and directed to execute and deliver the Special Economic Development Agreement and the Warrant for and on behalf of and in the name of the Municipality. The City Clerk is hereby authorized and directed to affix the official seal of the Municipality to the Special Economic Development Agreement and the Warrant and to attest the same.

(b) The Mayor, the City Manager, and the officers of the Municipality are each hereby authorized and directed to take all such actions, and execute, deliver and perform all such agreements, documents, instruments, notices, and petitions and proceedings, with respect to the Special Economic Development Agreement and the Warrant, as the Mayor and such officers shall determine to be necessary or desirable to carry out the provisions of this resolution or the Special Economic Development Agreement or duly and punctually observe and perform all agreements and obligations of the Municipality under the Special Economic Development Agreement.

Section 4. The Municipality desires, before the issuance of the Warrant referenced in the Special Economic Development Agreement, to validate the legality of all proceedings had or taken in connection therewith, the validity of the means provided for the payment of the Warrant, and the validity of all covenants and provisions contained in this resolution and the Special Economic Development Agreement and the Warrant, by filing a petition against the taxpayers and citizens of the Municipality in the Circuit Court of Jefferson County, Alabama. A complaint to validate such Warrant, proceedings, and covenants shall be filed and validation proceedings shall be instituted in the name of the Municipality and the members of the governing body of the Municipality. Maynard, Cooper & Gale, P.C., Birmingham, Alabama, and Patrick H. Boone, Esq., are hereby designated and appointed as the attorneys of the Municipality to file such complaint, institute such proceedings, and to take all steps necessary to complete such validation proceedings in accordance with the provisions of Article 17 of Chapter 6 of Title 6 of the CODE OF ALABAMA 1975. Any actions heretofore taken by such attorneys in connection with the filing of such petition or such validation proceedings are hereby ratified and confirmed.

Section 5. All prior actions taken, and agreements, documents or notices executed and delivered, by the Mayor or any officer or member of the Council or other representative of the Municipality, in connection with the agreements, covenants, and undertakings of the Municipality hereby approved, or in connection with the preparation of the Special Economic Development Agreement and the terms and provisions thereof, are hereby approved, ratified and confirmed.

Section 6. All ordinances, resolutions, orders, or parts of any thereof, of the Council in conflict, or inconsistent, with any provision of this resolution hereby are, to the extent of such conflict or inconsistency, repealed.

Section 7. This resolution shall take effect immediately.

After said resolution had been discussed and considered in full by the Council, it was moved by Councilmember _____ that said resolution be now placed upon its final passage and adopted. The motion was seconded by Councilmember _____. The question being put as to the adoption of said motion and the final passage and adoption of said resolution, the roll was called with the following results:

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

Nays: None

The Mayor thereupon declared said motion carried and the resolution passed and adopted as introduced and read.

* * * *

There being no further business to come before the meeting, it was moved and seconded that the meeting be adjourned. Motion carried.

Minutes approved:

Mayor

Mayor Pro-Tem

Member of the City Council

Member of the City Council

Member of the City Council

SEAL

Attest: _____
City Clerk

STATE OF ALABAMA)
JEFFERSON COUNTY)

CERTIFICATE OF CITY CLERK

I, the undersigned, do hereby certify that (1) I am the duly elected, qualified and acting City Clerk of the City of Vestavia Hills, Alabama (the "Municipality"); (2) as Clerk of the Municipality I have access to all original records of the Municipality and I am duly authorized to make certified copies of its records on its behalf; (3) the above and foregoing pages constitute a complete, verbatim and compared copy of excerpts from the minutes of a regular meeting of the City Council of the Municipality duly held on March 14, 2016, the original of which is on file and of record in the minute book of the City Council in my custody; (4) the ordinance set forth in such excerpts is a complete, verbatim and compared copy of such ordinance as introduced and adopted by the City Council on such date; and (5) said ordinance is in full force and effect and has not been repealed, amended or changed.

IN WITNESS WHEREOF, I have hereunto set my hand as Clerk of the Municipality and have affixed the official seal of the Municipality, this ____ day of _____, 2016.

Clerk of the City of Vestavia Hills,
Alabama

SEAL

SPECIAL ECONOMIC DEVELOPMENT AGREEMENT

Dated Date of Delivery

by

CITY OF VESTAVIA HILLS, ALABAMA

and

SCP AT LIBERTY PARK, LLC

This Special Economic Development Agreement was prepared by Heyward C. Hosch of Maynard, Cooper & Gale, P.C., 1901 Sixth Avenue North, 2400 Regions/Harbert Plaza, Birmingham, Alabama 35203-2618.

SPECIAL ECONOMIC DEVELOPMENT AGREEMENT

This **SPECIAL ECONOMIC DEVELOPMENT AGREEMENT** is made and entered as of the Date of Delivery by the **CITY OF VESTAVIA HILLS, ALABAMA**, an Alabama municipal corporation (the "Municipality"), and **SCP AT LIBERTY PARK, LLC** (the "Owner").

Recitals

The Owner expects and intends to expand and increase the tax and revenue base of the Municipality by development of commercial enterprises within the corporate limits of the Municipality.

The Municipality has agreed to provide the Owner, as provided herein, the within referenced Annual Economic Development Payments.

Pursuant to the applicable laws of the State of Alabama, and for the purposes, referenced herein, the Municipality and the Owner have delivered this Agreement.

Agreement

NOW, THEREFORE, for and in consideration of the premises, and the mutual covenants and agreements herein contained, the Municipality and the Owner hereby covenant and agree as follows:

ARTICLE 1

DEFINITIONS

For purposes of this Agreement the following terms shall have the following meanings:

Annual Economic Development Payments shall mean an amount equal to fifty percent (50%) of the Municipality Net Sales Tax Proceeds actually received by the Municipality from the Owner during the annual period for which such Annual Economic Development Payment is determined during the period beginning January 1, 2017 and ending December 31, 2026.

Annual Payment Date shall mean that date established by the Municipality for payment of the Annual Economic Development Payment in each year, which shall be the later of March 1 or 45 days after the receipt by the Municipality of the certificate therefor from the Owner pursuant to Section 4.02(a).

Date of Delivery shall mean _____, 2016.

Date of Termination shall mean that date on which the Municipality shall have no obligation to make any payment of Annual Economic Development Payments under this Agreement or the Warrant in accordance with Section 4.01(4).

Date of Validation shall mean that date on which a judgment entered by the Circuit Court of Jefferson County, Alabama validating and confirming the Warrant shall have become forever conclusive in accordance with, and as provided in, Section 6-6-755 of the Code of Alabama 1975.

Enabling Law shall mean Amendment No. 772 of the Constitution of Alabama of 1901, as amended, as at any time amended or supplemented, or any successor provision of law.

Municipality Sales Tax shall mean collectively the privilege license and excise taxes levied by the Municipality (commonly called sales and use taxes) which consist of (i) a privilege or license (commonly called sales) tax on persons engaged in the business of selling at retail any tangible personal property within the Municipality (subject to exemption of certain property as provided by law) or in the business of conducting places of amusement or entertainment within the Municipality, generally measured by the gross sales or receipts of such businesses and (ii) an excise (commonly called a use) tax on the storage, use or other consumption of tangible personal property (subject to exemptions of certain property as provided by law) within the Municipality, generally measured by the sales price of such property.

Municipality Net Sales Tax Proceeds for any year shall (a) mean and include all proceeds and receipts of the Municipality Sales Tax less and except proceeds of the Municipality Sales Tax dedicated for public school purposes and capital reserves, and (b) not include any proceeds or receipts received by the Municipality (i) from the levy by the Municipality of privilege license or excise taxes not described in the definition of Municipality Sales Tax or (ii) from the levy of privilege license or excise taxes of any kind, type or nature by taxing authorities other than the Municipality or (iii) from any increase in the Municipality Sales Tax enacted after the Date of Delivery.

Owner shall mean SCP at Liberty Park, LLC, and the successors and assigns thereof.

Total Municipality Tax Commitment shall mean the amount of Five Hundred Seventy-Five Thousand Dollars (\$575,000).

Warrant shall have the meaning set forth in Section 4.03.

ARTICLE 2

REPRESENTATIONS AND WARRANTIES

SECTION 2.01 The Municipality.

The Municipality hereby represents as follows:

(1) The Municipality has corporate power and authority to enter into this Agreement, pursuant to the Enabling Law and to carry out its obligations hereunder and by proper corporate action the Municipality has duly authorized the execution, delivery and performance of this Agreement.

(2) The Warrant shall be issued, sold and delivered upon condition, and purchased by the Owner thereof in the reliance, that this Agreement is enforceable against the Municipality in accordance with the terms hereof.

(3) The issuance of the Warrant and the application of the proceeds thereof for the purposes set forth in this Agreement (i) will result in direct financial benefits to the Municipality and (ii) will serve a valid and sufficient public purpose, notwithstanding any incidental benefit accruing to any private entity or entities.

(4) The Municipality represents and certifies that the indebtedness of the Municipality incurred pursuant to the Enabling Law is less than 50 percent of the assessed value of the taxable property in the Municipality as determined for state taxation for the fiscal year immediately preceding the Date of Delivery.

SECTION 2.02 The Owner.

The Owner hereby represents and warrants as follows:

(1) The Owner is duly organized and validly existing as a limited liability company under the laws of the State of Alabama and has duly authorized the execution, delivery and performance of this Agreement.

(2) The execution, delivery and performance of this Agreement by the Owner does not conflict with or result in a violation of any agreement, contract, instrument, order, writ, judgment or decree to which the Owner is a party or is subject.

(3) No consent or approval by, or filing with, any governmental authority in the State of Alabama is required for the execution or delivery of this Agreement by the Owner or for the full effectiveness or enforceability thereof under the laws of the State of Alabama.

(4) There is no action, suit, proceeding, inquiry or investigation pending before any court or governmental authority, or threatened in writing against or affecting the Owner, which involves the consummation of the transactions contemplated by, or the validity of, this Agreement.

ARTICLE 3

DURATION OF AGREEMENT

The obligations of the Municipality and the Owner hereunder shall arise on the Date of Validation and shall continue until the Date of Termination, except with respect to any specific agreement or covenant which by its terms expressly survives termination of this Agreement.

ARTICLE 4

AGREEMENTS AND OBLIGATIONS OF THE MUNICIPALITY

SECTION 4.01 Nature, Amount and Duration of Obligation of Municipality.

The Municipality and the Owner agree:

(1) Purpose. Pursuant to this Agreement, the Municipality has agreed to pay to the Owner of the Warrant in installments in arrears the Annual Economic Development Payments determined by the Municipality to be due and payable in accordance with the terms hereof.

(2) Limited Obligation. The obligation of the Municipality for the payment of the Warrant:

(a) is a limited obligation payable solely from the Annual Economic Development Payments;

(b) shall never constitute a general obligation, or a charge against the general credit or taxing powers, of the Municipality within the meaning of any constitutional provision or statutory limitation whatsoever;

(c) is subject to (i) all prior pledges of the Municipality Net Sales Tax Proceeds for the benefit of long term indebtedness of the Municipality and (ii) in accordance with Johnson v. Sheffield, 183 So. 265 (Ala. 1938), the law-imposed requirement that, if necessary, there must first be paid from all Municipality Net Sales Tax Proceeds (including without limitation the Annual Economic Development Payments) the legitimate and necessary governmental expenses of operating the Municipality; and

(d) shall commence after the Date of Validation.

(3) Maximum Amount. The maximum amount the Municipality shall pay under this Agreement and the Warrant shall be limited to and shall not exceed the Total Municipality Tax Commitment.

(4) Duration and Termination. Anything in this Agreement or in the Warrant to the contrary notwithstanding, the Municipality shall have no obligation to pay any amount of Annual Economic Development Payments under this Agreement or the Warrant:

(a) prior to the Date of Validation; or

(b) after the first to occur of (i) December 31, 2026 or (ii) that date on which the Municipality shall have paid as Annual Economic Development Payments an aggregate amount not less than the Total Municipality Tax Commitment or (iii) termination of this Agreement by the Municipality under Section 6.02(2).

SECTION 4.02 Determination and Payment of Annual Economic Development Payments.

(1) In order to receive an Annual Economic Development Payment, the Owner shall execute and deliver to the Municipality, on or before January 31 in each year in which this Agreement is in effect, a certificate in form and of content as attached as Exhibit B hereto.

(2) The Municipality shall, on the Annual Payment Date, determine as provided herein, and pay to the Owner, the amount, if any, of the Annual Economic Development Payment due hereunder for the period referenced in such certificate.

(3) The Municipality will permit any attorneys, accountants or other agents or representatives designated by the Owner to visit and inspect any of the accounting systems, books of account, and financial records and properties of the Municipality which pertain to the Municipality Net Sales Tax Proceeds and the determination of Annual Economic Development Payments, all at reasonable business times and upon reasonable notice.

SECTION 4.03 The Warrant.

(1) The obligation of the Municipality to pay the Annual Economic Development Payments hereunder shall be evidenced by a limited obligation revenue warrant, payable solely from, and secured by a pledge of, the Annual Economic Development Payments, in form and of content as the form of warrant attached to this Agreement as Exhibit A (the "Warrant").

(2) The Warrant shall not bear interest, shall be issued in an aggregate principal amount not exceeding the Total Municipality Tax Commitment, shall be dated the date of delivery, and shall mature on the Date of Termination.

(3) The Warrant shall be duly executed, sealed, and attested by the Municipality, and shall be registered by the Municipality as a conditional claim against the Annual Economic Development Payments.

(4) The Warrant shall be registered and transferred as provided therein.

SECTION 4.04 Agreements of the Municipality.

(1) All proceedings of the governing body of the Municipality heretofore had and taken, and all ordinances and resolutions adopted pursuant thereto with respect to the levy and collection of the Municipality Sales Tax, are hereby ratified and confirmed in all respects from and after the effective date thereof.

(2) The Municipality covenants and agrees the Municipality shall, as long as this Agreement and the Warrant shall be outstanding, continue to levy and to provide for the assessment and collection of the privilege license and excise taxes which provide the Municipality Net Sales Tax Proceeds at rates not less than those in effect on the date of this Agreement.

ARTICLE 5

OBLIGATIONS OF THE OWNER

(1) The Owner hereby agrees to duly and punctually observe and perform all agreements thereof under this Agreement.

(2) The Owner shall use the proceeds of the Annual Economic Development Payments solely for the purpose of development and operation of the business interests of the Owner within the Municipality.

(3) The Owner will pay all fees and expenses of the City, including counsel therefor, in connection with the execution and delivery of this Agreement and the issuance of the Warrant and the validation thereof.

(4) (a) The Owner agrees to defend, protect, indemnify, and hold harmless the Municipality, its agents, employees, and members of its governing body, from and against all claims or demands, including actions or proceedings brought thereon, and all costs, expenses, and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any of the following, provided, however, that the foregoing indemnity will not extend to the negligent misconduct of the City, its agents, employees, and members of its governing body: (i) any construction activity performed by Owner, or anyone claiming by through, or under Owner; and (ii) any loss of life, personal injury, or damage to property arising from or in relation to the entry upon, construction, use, operation or occupancy of the Project, including, without limitation, tenants, customers and invitees of the Project and/or Owner.

(b) The agreements and covenants in this Article 5 shall survive the termination of this Agreement with respect to events or occurrences happening prior to or upon the termination of this Agreement and shall remain in full force and effect until commencement of an action with respect to any thereof shall be prohibited by law.

ARTICLE 6

EVENTS OF DEFAULT AND REMEDIES

SECTION 6.01 Events of Default.

Any one or more of the following shall constitute an event of default by the Municipality or the Owner hereunder (an "Event of Default") under this Agreement:

(1) default in the performance, or breach, of any covenant or warranty of the Municipality in this Agreement, including without limitation default in the payment of any Annual Economic Development Payments under Section 4.02 hereof, and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the Municipality by the Owner a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, the Municipality shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default; or

(2) default in the performance, or breach, of any covenant or warranty of the Owner in this Agreement, and the continuance of such default or breach for a period of 30 days after there has been given, by registered or certified mail, to the Owner by the Municipality a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "notice of default" hereunder, provided that if such default is of a kind which cannot reasonably be cured within such thirty-day period, the Owner shall have a reasonable period of time within which to cure such default, provided that it begins to cure the default promptly after its receipt of such written notice and proceeds in good faith, and with due diligence, to cure such default.

SECTION 6.02 Remedies.

(1) Each party hereto may proceed to protect its rights and interests by suit in equity, action at law or other appropriate proceedings, whether for the specific performance of any covenant or agreement of any other party herein contained or in aid of the exercise of any power or remedy available at law or in equity.

(2) Anything in this Agreement to the contrary notwithstanding, the Municipality may terminate this Agreement upon the occurrence of an Event of Default under Section 6.01(2), whereupon the Municipality shall have no further obligation hereunder.

SECTION 6.03 Remedies Subject to Applicable Law.

All rights, remedies and powers provided by this Agreement may be exercised only to the extent the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that the same will not render this Agreement invalid or unenforceable.

ARTICLE 7

PROVISIONS OF GENERAL APPLICATION

SECTION 7.01 Enforceability.

The provisions of this Agreement shall be severable. In the event any provision hereof shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any of the remaining provisions hereof.

SECTION 7.02 Prior Agreements Cancelled.

This Agreement shall completely and fully supersede all other prior agreements, both written and oral, by the parties hereto relating to the matters contained herein. None of the parties hereto shall hereafter have any rights under any of such prior agreements but shall look to this Agreement for definition and determination of all of their respective rights, liabilities and responsibilities relating to the matters contained herein.

SECTION 7.03 Counterparts.

This Agreement may be executed in counterparts, each of which shall constitute but one and the same agreement.

SECTION 7.04 Binding Effect; Governing Law.

(1) This Agreement shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns except as otherwise provided herein.

(2) This Agreement shall be governed exclusively by the laws of the State of Alabama.

SECTION 7.05 Notices.

(1) All notices, demands, consents, certificates or other communications hereunder shall be in writing, shall be sufficiently given and shall be deemed given when delivered personally to the party or to an officer of the party to whom the same is directed, or mailed by registered or certified mail, postage prepaid, or sent by overnight courier, addressed as follows:

- | | |
|-------------------------------|---------------------------|
| (a) if to the Municipality: | (b) if to the Owner: |
| City Hall | 1000 Urban Center Drive |
| 513 Montgomery Highway | Suite 675 |
| Vestavia Hills, Alabama 35216 | Birmingham, Alabama 35242 |

(2) Any such notice or other document shall be deemed to be received as of the date delivered, if delivered personally, or as of three (3) days after the date deposited in the mail, if mailed, or the next business day, if sent by overnight courier.

SECTION 7.06 Delegation and Assignment of this Agreement by Owner.

(1) The Owner shall have no authority or power to, and shall not, delegate to any Person the duty or obligation to observe or perform any agreement or obligation of the Owner hereunder.

(2) The Owner shall not have any authority or power to, and shall not, without the prior written consent of the Municipality (which shall not be unreasonably withheld, delayed or conditioned), assign or pledge to any Person any right of the Owner hereunder or any interest of the Owner herein.

SECTION 7.07 Amendments

This Agreement may be amended or supplemented only by an instrument in writing duly authorized, executed and delivered by each party hereto.

IN WITNESS WHEREOF, the Municipality has caused this Agreement to be executed in its name, under seal, and the same attested, all by officers thereof duly authorized thereunto, and the Owner has executed this Agreement under seal, and the parties have caused this Agreement to be dated the date and year first above written.

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Mayor

By _____
City Manager

SEAL

ATTEST: _____
City Clerk

SCP AT LIBERTY PARK, LLC

By: _____ (L.S.)

Its: _____

EXHIBIT A

Form of Warrant

THIS WARRANT HAS NOT BEEN REGISTERED (i) UNDER THE SECURITIES ACT OF 1933, AS AMENDED, IN RELIANCE UPON THE EXEMPTION PROVIDED BY SECTION 4(2) OF SAID ACT, OR (ii) UNDER ANY STATE SECURITIES LAW, IN RELIANCE UPON APPLICABLE EXEMPTIONS, AND MAY NOT BE TRANSFERRED WITHOUT REGISTRATION EXCEPT PURSUANT TO AN EXEMPTION THEREFROM.

THIS WARRANT DOES NOT BEAR INTEREST

**UNITED STATES OF AMERICA
STATE OF ALABAMA**

**CITY OF VESTAVIA HILLS
LIMITED OBLIGATION ECONOMIC DEVELOPMENT REVENUE WARRANT
(SCP AT LIBERTY PARK, LLC)**

No. R-1

DATED DATE:

_____, 2016

MATURITY DATE:

Date of Termination

The CITY OF VESTAVIA HILLS, a municipal corporation organized and existing under and by virtue of the laws of the State of Alabama (the "Issuer"), for value received, hereby acknowledges itself indebted to

SCP AT LIBERTY PARK, LLC

or registered assigns (collectively the "Owner") in a principal amount not exceeding

**FIVE HUNDRED SEVENTY-FIVE THOUSAND DOLLARS
(\$575,000)**

as determined pursuant to the within-referenced Agreement, and hereby orders and directs the Finance Director of the Issuer to pay to the Owner, solely from the Annual Economic Development Payments deposited in the Warrant Fund hereinafter designated, said principal amount, without interest, on each Annual Payment Date, until and including the Maturity Date specified above.

Authority for Issuance

This Warrant is issued pursuant to the authority of the Constitution and laws of the State of Alabama, including particularly and without limitation Amendment No. 772 of the Constitution of Alabama of 1901, as amended (collectively the "Enabling Law"), and that certain Special Economic Development Agreement dated the above Dated Date (the "Agreement") by the Issuer and SCP at Liberty Park, LLC.

Capitalized terms used hereinbefore and hereinafter without definition shall have the respective meanings assigned thereto in the Agreement.

Reference is made to the provisions of the Agreement, to and by which all of which provisions the Owner, by acceptance of this Warrant, assents and agrees to be bound.

Payment

Payment of this Warrant shall be made to or as directed by the Owner; provided the final payment of principal of this Warrant shall be made only upon presentation and surrender of this Warrant to the Issuer for cancellation.

Each payment of principal made on this Warrant shall be reflected by the notations made by the Issuer on its internal records (which may be kept by computer or by other means determined by the Issuer) and the Issuer is hereby authorized so to record thereon all such payments. All payments of principal on this Warrant and the aggregate unpaid principal amount of this Warrant reflected on the internal records of the Issuer (whether by computer or otherwise) shall be rebuttably presumptive evidence of the principal amount of this Warrant outstanding and unpaid.

All payments of principal of this Warrant by the Issuer shall be made at par in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts, and shall be valid and effectual to satisfy and discharge the liability of the Issuer upon this Warrant to the extent of the amounts so paid.

The person in whose name this Warrant is registered shall be deemed and regarded as the absolute owner hereof for all purposes and payment of the principal of this Warrant shall be made only to or upon the order of the Owner hereof or his legal representative, and neither the Issuer nor any agent of the Issuer shall be affected by any notice to the contrary.

Security

This Warrant is a limited obligation of the Issuer payable solely from the Annual Economic Development Payments as provided in the Agreement.

The Annual Economic Development Payments are hereby pledged to the payment, and for the benefit, of this Warrant, subject to (i) all prior pledges of the Municipality Net Sales Tax Proceeds for the benefit of long term indebtedness of the Municipality and (ii) in accordance with Johnson v. Sheffield, 183 So. 265 (Ala. 1938), the law-imposed requirement that, if necessary, there must first be paid from all Municipality Net Sales Tax Proceeds (including without limitation the Annual Economic Development Payments) the legitimate and necessary governmental expenses of operating the Municipality.

This Warrant shall never constitute a charge against the general credit or taxing powers of the Issuer within the meaning of any constitutional provision or statutory limitation whatsoever.

The Issuer has established a special fund designated "Warrant Fund" (the "Warrant Fund") for the payment of this Warrant and has obligated itself to pay or cause to be paid into the Warrant Fund, solely from the Annual Economic Development Payments, sums sufficient to provide for the payment of this Warrant.

Prepayment and Redemption

The Issuer may, on any date, pay in advance the entire unpaid principal amount of this Warrant or any lesser portion or portions thereof by paying to the Owner the principal amount to be prepaid without premium or penalty.

Registration and Transfer

This Warrant is registered as to principal and interest in the name of the Owner on the book of registration maintained for that purpose by the Issuer.

This Warrant may be transferred only upon written direction of the registered owner or his legal representative, addressed to the Municipality, presentation of this Warrant to the Municipality accompanied by a written instrument of transfer, satisfactory to the Municipality, duly executed by the registered owner or his attorney duly authorized in writing, and compliance with Section 7.06 of the Agreement. Upon presentation of this Warrant to the Municipality for transfer, the Municipality shall record such transfer on the said book of registration and execute and deliver, in exchange for this Warrant, a new warrant or warrants of like tenor hereof, registered in the name of the transferee in an aggregate principal amount equal to the unpaid or unredeemed portion of the principal of this Warrant. No charge shall be made for the privilege of transfer, but the registered owner of this Warrant requesting any such transfer shall pay any tax or other governmental charge required to be paid with respect thereto.

General

No covenant or agreement contained in this Warrant or in the Agreement shall be deemed to be a covenant or agreement of any officer, agent, employee, or member of the governing body of the Issuer in the individual capacity thereof and none of such parties or persons nor any officer executing this Warrant shall be liable personally on this Warrant or be subject to any personal liability or accountability by reason of the issuance of this Warrant.

It is hereby recited, certified and declared that the indebtedness evidenced and ordered paid by this Warrant is lawfully due without condition, abatement or offset of any description, that this Warrant has been registered in the manner provided by law, that this Warrant represents a valid claim against the Warrant Fund, that all acts, conditions and things required by the Constitution and laws of the State of Alabama to happen, exist and be performed precedent to and in the execution, registration and issuance of this Warrant, the adoption of the resolution approving the Agreement, and the execution and delivery of the Agreement, have happened, do exist and have been performed in due time, form and manner as so required by law and that the principal amount of this Warrant, together with all other indebtedness of the Issuer, are within every debt and other limit prescribed by the Constitution and laws of the State of Alabama.

IN WITNESS WHEREOF, the Issuer, acting by and through the City Council of the Issuer, as the governing body thereof, has caused this Warrant to be executed in its name and on its behalf by the Mayor of the Issuer, has caused its corporate seal to be affixed hereto and the same attested by the City Clerk of the Issuer, and has caused this Warrant to be dated the date and year first above written.

CITY OF VESTAVIA HILLS, ALABAMA

By _____
Mayor

SEAL

Attest: _____
City Clerk

REGISTRATION CERTIFICATE

The undersigned hereby certifies that this Warrant has been duly registered as a conditional claim against the City of Vestavia Hills, in the State of Alabama, and the Warrant Fund referred to herein, and the Annual Economic Development Payments pledged to the payment hereof.

Finance Director of the City of Vestavia Hills,
Alabama

VALIDATION CERTIFICATE

Validated and confirmed by judgment of the Circuit Court of Jefferson County, State of Alabama entered on the _____ day of _____, 2016.

/s/

Clerk of Circuit Court of Jefferson County,
State of Alabama

REGISTRATION OF OWNERSHIP

This Warrant is recorded and registered on the warrant register of the City of Vestavia Hills in the name of the last owner named below. The principal of this Warrant shall be payable only to or upon the order of such registered owner.

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Signature of Authorized Officer of Issuer</u>
Dated Date	SCP at Liberty Park, LLC	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Assignment

For value received, _____ hereby sell(s), assign(s) and transfer(s) unto _____ this warrant and hereby irrevocably constitute(s) and appoint(s) _____ attorney to transfer this warrant on the books of the within named Issuer with full power of substitution in the premises.

Dated: _____

NOTE: The name signed to this assignment must correspond with the name of the payee written on the face of the within warrant in all respects, without alteration, enlargement or change whatsoever.

Signature Guaranteed:

(Bank or Trust Company)

By _____
(Authorized Officer)

EXHIBIT B

Request for Payment of Annual Economic Development Payments

Request for Payment of Annual Economic Development Payments

From: SCP at Liberty Park, LLC

To: City of Vestavia Hills, Alabama

Date: _____, 20__

Re: **Special Economic Development Agreement dated the Date of Delivery by City of Vestavia Hills, Alabama (the "Municipality") and SCP at Liberty Park, LLC (the "Owner").**

The undersigned, as Owner under the above Agreement, hereby requests payment to the Owner by the Municipality of the Annual Economic Development Payment, to be determined by the Municipality as provided in the Agreement, for the following period:

_____ 1, 20__ to _____ 1, 20__

and in connection therewith does hereby represent, warrant and certify to the Municipality as follows:

1. The total amount paid by the Owner to the Municipality pursuant to the levy of the Municipality Sales Tax for the above period is \$_____.
2. The Owner is in full compliance with the agreements and covenants thereof under the Agreement and no Event of Default, or any event which upon notice, or lapse of time, or both shall become an Event of Default, has occurred and is continuing.
3. The Agreement is in full force and effect.
4. The Owner is in full compliance with all applicable ordinances and regulations of the Municipality.

Capitalized terms used herein shall have the respective meanings assigned in the above Agreement.

In Witness Whereof, the undersigned Owner has caused this instrument to be executed in its name, under seal, by an officer thereof duly authorized thereunto.

SCP at Liberty Park, LLC
as Owner

By _____

Its _____

ORDINANCE NUMBER 2650

AN ORDINANCE AUTHORIZING THE SETTLEMENT OF THE CASE OF VESTAVIA PLAZA, LLC V. CITY OF VESTAVIA HILLS, ALABAMA, ET AL, BEING CIVIL ACTION NUMBER 2:11-CV-04152-TMP PRESENTLY PENDING IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION; AUTHORIZING AND DIRECTING THE MAYOR AND CITY MANAGER TO PAY THE FUNDS DESCRIBED HEREIN AND TO TAKE ANY ACTION AND EXECUTE AND DELIVER ANY AND ALL DOCUMENTS NECESSARY TO EFFECTUATE SAID SETTLEMENT.

THIS ORDINANCE NUMBER 2650 is approved, adopted and enacted by the City Council of the City of Vestavia Hills, Alabama on this the 14th day of March, 2016.

WITNESSETH THESE RECITALS:

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

WHEREAS, Title 11-43-43, *Code of Alabama, 1975*, provides that all legislative powers granted to cities shall be exercised by the City Council; and

WHEREAS, Title 11-40-1, *Code of Alabama, 1975*, declares municipalities bodies corporate and gives them the power to contract and be contracted with; provided, however, that the contract is in writing as required by Title 11-47-5, *Code of Alabama, 1975*; that the execution and delivery of the contract shall have first been approved by the City Council, *Town of Boligee v. Greene County Water and Sewer Authority*, 77 So.3d 1166 (2011), in the form of an ordinance or resolution, *Van Antwerp, et al v. Board of Commissioners of City of Mobile*, 217 Ala. 201, 115 So. 239 (1928); that the contract be signed by the Mayor as required by Title 11-43-83, *Code of Alabama, 1975*; and that the contract be signed by the City Manager as required by Title 11-43-21(7), *Code of Alabama, 1975*; and

WHEREAS, Title 11-47-24(b), *Code of Alabama, 1975*, provides that all municipal corporations of the State of Alabama are authorized to contract at governmental expense for policies of liability insurance to protect employees in the course of their employment; and

WHEREAS, Title 11-47-190, *Code of Alabama, 1975*, provides that municipalities may be liable for the negligent acts of its employees acting in the line and scope of their employment; and

WHEREAS, Title 11-93-2, *Code of Alabama, 1975*, establishes the maximum amount of damages recoverable against governmental entities with a limit of One Hundred Thousand Dollars (\$100,000.00); and

WHEREAS, Title 11-47-24(a), *Code of Alabama, 1975*, provides that a city may provide a legal defense for municipal employees sued for damages and indemnify those employees; and

WHEREAS, the case of *Vestavia Plaza, LLC v. City of Vestavia Hills, Alabama, et al*, (hereinafter referred to as “lawsuit”) was filed on December 9, 2011 as civil action number 2:11-CV-04152-TMP in the United States District Court for the Northern District of Alabama, Southern Division, and said lawsuit is presently pending; and

WHEREAS, Trident is the authorized claims representative of Argonaut Great Central Insurance Company, which insures the City of Vestavia Hills, Alabama, its employees and public officials with Public Officials liability coverage and Commercial Excess policy coverage (hereinafter referred to as “Trident policy”); and

WHEREAS, in year 2011, the City and its employees and public officials were insured by Argonaut Great Central Insurance Company through Trident; and

WHEREAS, City Attorney Patrick H. Boone, by letter dated March 14, 2016, has recommended that the lawsuit be settled pursuant to the terms, provisions and conditions set forth in said letter; and

WHEREAS, a copy of the letter, dated March 14, 2016, from City Attorney Patrick H. Boone is attached hereto, marked as Exhibit A and is incorporated into this ordinance by reference as though set out fully herein.

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

1. The City Manager and Mayor are hereby authorized and directed to settle the lawsuit described in the premises above pursuant to the written recommendation of City Attorney Patrick H. Boone pursuant to the terms, provisions and conditions hereinafter set forth below.

2. The total amount of settlement to be paid by and/or for and on behalf of the City of Vestavia Hills, Alabama (“City”) shall be the sum of Six Hundred Thousand Dollars (\$600,000.00) consisting of the following:

A. Trident shall pay the sum of Five Hundred Thousand Dollars (\$500,000.00); and

B. The City shall pay an additional One Hundred Thousand Dollars (\$100,000.00).

3. The lawsuit against all Defendants named in the lawsuit shall be dismissed with prejudice.

4. The Plaintiff shall forever discharge and release all of the named Defendants in the lawsuit from any and all damages arising out of the incident made the basis of this lawsuit and shall make no claim for any attorney fee whatsoever against the Defendants.

5. The Mayor and City Manager are hereby authorized and directed to pay the funds described in section 2 above and to take any action and execute and deliver any and all documents necessary to effectuate said settlement.

6. The settlement authorized herein is a compromise, adjustment and settlement of a disputed claim and the payment of the sum recited in section 2 above is not an admission of liability by the City of Vestavia Hills, Alabama or any of its public officials or public employees and the City expressly denies liability.

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

8. The provisions of this Ordinance Number 2650 shall become effective immediately upon the passage, approval and adoption thereof by the City Council of the City of Vestavia Hills, Alabama and the publication and/or posting thereof as required by Alabama law.

ORDAINED, APPROVED, ADOPTED, DONE and ORDERED on this the 14th day of March, 2016.

Steve Ammons
Mayor Pro-Tem

ATTESTED BY

Rebecca Leavings
City Clerk

CERTIFICATION OF CITY CLERK

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, Rebecca Leavings, City Clerk of the City of Vestavia Hills, Alabama, do hereby certify that the above and foregoing is a true and correct copy of an ordinance duly and legally adopted by the City Council of the City of Vestavia Hills, Alabama, on the ____ day of _____, 2016 while in regular session, and the same appears of record in the minute book of said date of said City.

Witness my hand and seal of office this ____ day of March, 2016.

Rebecca Leavings, City Clerk

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

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

March 14, 2016

By Electronic Mail

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

In Re: Vestavia Plaza, LLC v. City of Vestavia Hills, et al
US District Court Case No. 2-11-cv-04152-TMP

Dear Mr. Downes:

The above captioned case has been pending since December 9, 2011. After communicating with Ron Massey, the Manager-Claims Litigation for Trident Public Risk Solutions, I recommend that this case be settled upon the following terms, provisions and conditions:

1. The total amount of settlement to be paid by and/or for and on behalf of the City of Vestavia Hills, Alabama ("City") shall be the sum of Six Hundred Thousand Dollars (\$600,000.00) consisting of the following:

A. Trident shall pay the sum of Five Hundred Thousand Dollars (\$500,000.00);
and

B. The City shall pay One Hundred Thousand Dollars (\$100,000.00).

2. The lawsuit against all Defendants named in the lawsuit shall be dismissed with prejudice.

3. The Plaintiff shall forever discharge and release all of the named Defendants in the lawsuit from any and all damages arising out of the incident made the basis of this lawsuit and shall make no claim for any attorney fee whatsoever against the Defendants.

4. The Mayor and City Manager shall be authorized and directed to pay the funds described in section 1 above and to take any action and execute and deliver any and all documents necessary to effectuate said settlement.

March 14, 2016

Page 2

5. The settlement authorized herein is a compromise, adjustment and settlement of a disputed claim and the payment of the sum recited in section 1 above is not an admission of liability by the City of Vestavia Hills, Alabama or any of its public officials or public employees and the City expressly denies liability.

I have prepared and enclose copy of Ordinance Number 2650 for consideration by the City Council at its regularly scheduled meeting on Monday, March 14, 2016, at 6:00 p.m. I will appreciate being allotted approximately five minutes to explain the basis of my recommendation and to answer any questions that any member of the City Council might have.

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

Sincerely,

A handwritten signature in blue ink that reads "Patrick H. Boone". The signature is written in a cursive style with a long horizontal line extending to the right.

Patrick H. Boone
Vestavia Hills City Attorney

PHB:gp
Enclosure

ORDINANCE NUMBER 2648

**AN ORDINANCE GRANTING CONDITIONAL USE APPROVAL
FOR A HOME OCCUPATION**

WHEREAS, on December 13, 2010, the City Council of the City of Vestavia Hills, Alabama, adopted and approved Ordinance Number 2331, also known as the City of Vestavia Hills Zoning Code; and

WHEREAS, on February 19, 2001 the City Council of the City of Vestavia Hills adopted and approved Ordinance Number 1864 to rezone 3,350 +/- acres from multiple Jefferson County and Vestavia Hills zoning classifications to Vestavia Hills P.U.D.; and

WHEREAS, Section 709.5.A.1.b of Ordinance Number 1838 classifies a “home occupation” permitted only as a “Conditional Use” and

WHEREAS, James Sumner, Jr. is the owner of the property located at 854 Vestlake Ridge Drive, currently zoned Vestavia Hills PUD PR-1 (planned unit development planned residential district) more particularly described as Lot 1070, Vestlake Ridge; and

WHEREAS, James Sumner, Jr. has submitted application for conditional use approval for a home occupation to be operated in his residence located at 854 Vestlake Ridge Drive, Vestavia Hills, Alabama located in the Liberty Park P.U.D.; and

WHEREAS, James Sumner, Jr. has indicated in his application for conditional use approval that he will operate an office for his consultation business out of his home pursuant to the specifications of a home occupation; and

WHEREAS, a copy of said application dated January 14, 2016 is attached and hereby incorporated into this Ordinance Number 2648.

**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 James Sumner, Jr. for a home occupation as described in the above-referenced application for his residence located at 854 Vestlake Ridge Drive, Vestavia Hills, Alabama located in Liberty Park P.U.D. subject to the provisions outlined in Article 9 of the Vestavia Hills Zoning Code outlined as follows:
 - a. “Home occupation is defined as any use customarily conducted entirely within a dwelling and carried on solely by the inhabitant thereof, and which use is clearly incidental, accessory, subordinate and secondary to the use of the dwelling for dwelling purposes, and does not change the character of the dwelling itself or any part of parcel of property in the neighborhood surrounding said dwelling; and
 - b. Home occupations shall be conducted only in the main dwelling building on the lot. No more than twenty-five percent (25%) of the said dwelling may be used for a home occupation; and
 - c. There shall be no public display of goods and absolutely no commodities sold on the premises; and
 - d. No sign may be attached to the dwelling or any part of the real estate advertising any home occupation; and
 - e. No home occupation or profession shall be permitted if such occupation creates noise, odors, vibrations or traffic which interferes with the residential qualities of the neighborhood insofar as health, safety, morals, convenience and general welfare are concerned; and

- f. In order to be a permitted home occupation or profession, the use must be one which is habitually, customarily and commonly established as a reasonable incidental, accessory, subordinate and secondary use; and
 - g. Operation of any and all other business of any nature in residential zones is expressly prohibited; and
 - h. The activity carried on as home occupation shall be limited to the hours between 7:00 AM and 10:00 PM; and
 - i. No home occupation shall be permitted that requires the operation or keeping on premises of a commercial vehicle and no additional traffic shall be generated by said conditional use; and
 - j. No persons other than members of the family residing on the premises shall be employed by the home occupation; and
- 2. Conditional Use Approval is further conditioned upon and subject to all applicable private and restrictive covenants attached to the property located at said property located in the Liberty Park P.U.D.
 - 3. A City of Vestavia Hills Business License shall be issued upon application and payment by James Sumner, Jr. working subject to the rules and regulations outlined in the Vestavia Hills Business License Code and shall be renewed each year that the home occupation is operated from the location at said property located in the Liberty Park P.U.D.
 - 4. At any time should James Sumner, Jr. vacate the premises located at 854 Vestlake Ridge Drive, Vestavia Hills, Alabama, discontinue or relocate this

business, this conditional use approval shall be nullified and said Ordinance Number 2648 shall be automatically repealed.

5. This Ordinance Number 2648 shall become effective immediately upon adoption, approval and publishing/posting pursuant to Alabama law; and

DONE, ORDERED, ADOPTED and APPROVED this the 28th day of March, 2016.

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 # 2648 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28th day of March, 2016 as same appears in the official records of said City.

Posted at Vestavia Hills Municipal Center, Vestavia Library in the Forest, Vestavia Hills New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2016.

Rebecca Leavings
City Clerk

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

Date: **FEBRUARY 11, 2016**

- **CASE:** P-0216-07
- **REQUESTED ACTION:** Conditional Use Approval for a home based business
- **ADDRESS/LOCATION:** 854 Vestlake Ridge Dr.
- **APPLICANT/OWNER:** James L. Sumner, Jr.
- **GENERAL DISCUSSION:** The applicant wishes to conduct a home based business in Liberty Park. As required by the Liberty Park PUD a conditional use permit is required for a home based business. A description of the applicants business, as well as an approval letter from Liberty Park is attached. The property is zoned PR-1.
- **LIBERTY PARK MASTER PLAN:** This request is consistent with the procedures of the Liberty Park PUD.
- **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: I recommend the Commission recommend approval with the following conditions:

1. Home occupations shall be conducted only in the principal dwelling. No more than twenty-five (25) percent, up to 500 sq. ft., of the dwelling may be used for a home occupation.
2. There shall be no outdoor display or storage associated with the home occupation and no commodities shall be sold on the premises other than by phone, mail or internet. No goods shall be delivered to a purchaser on the premises.
3. No sign may be attached to the dwelling or any part of the real estate advertising any home occupation.
4. No home occupation shall be permitted if it creates noise, odors, vibrations or traffic congestion, which interferes with the residential qualities of the neighborhood insofar as health, safety, morals, convenience and general welfare are concerned.

5. In order to be a permitted home occupation, the use must be one which is habitually, customarily, and commonly established as a reasonable incidental, accessory, subordinate and secondary use. The existing dwelling shall not be enlarged to accommodate the home occupation; nor shall any accessory structure be built for the purpose of operating the home occupation.

6. No home occupation shall be permitted that requires the operation or keeping on premises of a commercial vehicle.

7. No persons other than members of the family residing on the premises shall be employed by the home occupation.

8. Home occupations shall be limited to the hours between 7:00 a.m. and 10:00 p.m.

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

MOTION Mr. Burrell made a motion to recommend approval of Conditional Use Approval for a home based business at 854 Vestlake Ridge Dr. with the following conditions:

1. Home occupations shall be conducted only in the principal dwelling. No more than twenty-five (25) percent, up to 500 sq. ft., of the dwelling may be used for a home occupation.

2. There shall be no outdoor display or storage associated with the home occupation and no commodities shall be sold on the premises other than by phone, mail or internet. No goods shall be delivered to a purchaser on the premises.

3. No sign may be attached to the dwelling or any part of the real estate advertising any home occupation.

4. No home occupation shall be permitted if it creates noise, odors, vibrations or traffic congestion, which interferes with the residential qualities of the neighborhood insofar as health, safety, morals, convenience and general welfare are concerned.

5. In order to be a permitted home occupation, the use must be one which is habitually, customarily, and commonly established as a reasonable incidental, accessory, subordinate and secondary use. The existing dwelling shall not be enlarged to accommodate the home occupation; nor shall any accessory structure be built for the purpose of operating the home occupation.

6. No home occupation shall be permitted that requires the operation or keeping on premises of a commercial vehicle.

7. No persons other than members of the family residing on the premises shall be employed by the home occupation.

8. Home occupations shall be limited to the hours between 7:00 a.m. and 10:00 p.m.

Second was by Mr. Gilchrist. Motion was carried on a roll call; vote as follows:

Mr. Goodwin – yes

Mr. Gilchrist – yes

Mr. Wolfe – yes

Mr. Brooks – yes

Motion carried.

Mr. Burrell – yes

Mr. Sharp – yes

Mr. Visintainer – yes

Mr. Larson – yes

February 2016

P0216-07//
854 Vestlake Ridge Drive
Conditional Use
James Sumner, Jr.
PR1

PUD CITY OF VESTAVIA HILLS

P&Z Application
Ordinance 248
Exhibit A Page 4

APPLICATION

PLANNING AND ZONING COMMISSION

2016 JAN 14 A 3:25

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: JAMES L. SUMNER, JR

ADDRESS: 854 Vestlake Ridge Drive
Vestavia Hills, AL 35242

MAILING ADDRESS (if different from above) Post Office Box 430197
Birmingham, AL 35243

PHONE NUMBER: Home 334-462-9944 Office _____

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT: None

P0216-07//

854 Vestlake Ridge Drive

Conditional Use

James Sumner, Jr.

PR1

PUD

P&Z Application

Ordinance 2648

Exhibit A Page 5

III. ACTION REQUESTED

Request that the above described property be approved conditional use approval pursuant to Section Home Occupation of the Vestavia Hills Zoning Code.

Current Zoning of Property: PUD PR1

Requested Conditional use For the intended purpose of: Consulting

(Ethics Compliance for Business)
(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.)

Liberty Park Joint Venture, Lot 1070 —
854 Vestlake Ridge Drive, Vestavia Hills
35242

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

V. INFORMATION ATTACHED:

Attached Checklist complete with all required information.

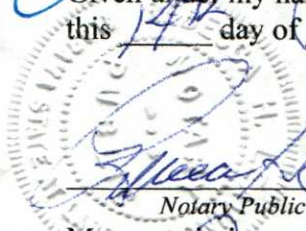
Application fees submitted.

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.

James Sumner Jr. 1/14/16
Owner Signature/Date

Representing Agent (if any)/date

Given under my hand and seal
this 14th day of Jan, 2016.



[Signature]
Notary Public

My commission expires 15th
day of July, 2016.



JIM SUMNER & ASSOCIATES, LLC

Post Office Box 430197

Birmingham, Alabama 35243-0197

Telephone: 334.462.9944

Email: js@jimsumnerandassociates.com

Ordinance 2648
Exhibit A Page 6

James L. Sumner, Jr.

January 14, 2016

Vestavia Hills Planning and Zoning Commission
c/o Rebecca Leavings, City Clerk
City of Vestavia Hills
1032 Montgomery Highway
Vestavia Hills, Alabama 35216

P0216-07//
854 Vestlake Ridge Drive
Conditional Use
James Sumner, Jr. PUD
PR1

Members of the Commission:

I come before you seeking approval for a Conditional Use Approval allowing my LLC to conduct business as a Home Occupation in Liberty Park.

Upon my retirement after seventeen years as Director of the Alabama Ethics Commission, I formed an LLC, named Jim Sumner & Associates, LLC, for the purpose of some limited consulting on ethics compliance issues for business. In the meantime, my wife and I have built a home in Liberty Park into which we have just moved.

My business consists solely of me, a Post Office Box, a cell telephone and an e-mail address. I have no employees, no office, no equipment, no inventory and no deliveries at my address in Liberty Park. I do not ever plan on having any employees, nor will I have meetings with clients at my home. Simply stated, the conduct of my business is me answering questions or providing analysis on compliance issues and, periodically, me traveling to their offices for a meeting or presentation.

I would sincerely appreciate your favorable consideration of my request. I will be pleased to provide any additional information the Commission needs or answer any of your questions.

Sincerely,

James L. Sumner, Jr

January 14, 2016

Rebecca Leavings, City Clerk
City of Vestavia Hills
Vestavia Hills City Hall
Vestavia Hills, Alabama 35216

Re: James L. Sumner, Jr.
854 Vestlake Ridge Drive
Vestavia Hills, AL 35242

Dear Ms. Leavings:

We are writing in connection with the above matter. We understand Mr. James L. Sumner, Jr. is in the process of applying for a conditional use within the PR-1 (Planned Single-Family Residential) classification of the Liberty Park PUD to allow him to conduct a home occupation as a consultant in his residence.

We have no objection to the granting of the conditional use to allow a home occupation in this case, provided such use is made subject to the following restrictions:

1. There shall be no customer, client or employee traffic to, at or near the residence that is generated, directly or indirectly, by the home occupation;
2. There shall be no pick ups or deliveries to the residence that are related, directly or indirectly, to the home occupation, including without limitation, pick ups and deliveries by overnight courier services and pick ups and deliveries of inventory, samples or other goods and services related, directly or indirectly, to the home occupation;
3. There shall be no signage on the property related, directly or indirectly, to the home occupation; and
4. In all respects, there shall be no means, visual or otherwise, by which a casual observer would become aware that the residence is being used for any purpose other than strictly residential.

The foregoing restrictions are in keeping with the intent and spirit of the Liberty Park PUD and with the overall plan of development for Liberty Park as addressed in the Covenants, Conditions and Restrictions that are applicable to the subject property.

Rebecca Leavings
January 14, 2016
Page 2


Therefore, we respectfully request that if the Planning and Zoning Commission votes to approve the conditional use applied for in the above referenced matter, such approval will be made subject to the above and foregoing restrictions.

If you have questions or comments regarding this matter, or if we can assist in any other way, please call me at 281-3542.

Very truly yours,

LIBERTY PARK JOINT VENTURE, LLP

By: _____


Samuel G. Lowrey, III
Project Manager
and Authorized Representative

cc: Kathryn Carver, Esq.

ORDINANCE NUMBER 2649

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 A TO VESTAVIA HILLS A

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 A (ariculture) to Vestavia Hills A (agriculture):

2834 and 2838 Acton Place
Gail M. Acton, Owner

More particularly described as follows:

Parcel 1:

A parcel of land located in the Southeast Quarter of the Northwest Quarter of Section 34, Township 18 South, Range 2 West, more particularly described as follows :

Commence at the Northwest comer of said Quarter-Quarter section; thence in a Southerly direction along the Westerly line of said Quarter-Quarter section, a distance of 324.17 feet; thence 53 degrees 36 minutes 24 seconds left, in a Southeasterly direction a distance of 551.35 feet to the Point of Beginning; thence continue along last described course, a distance of 193.54 feet; thence 20 degrees 46 minutes 34 seconds right in a Southeasterly direction a distance of 116.12 feet to a point 30 feet northerly from the center line of the existing Acton Place; thence 104 degrees 58 minutes 20 seconds right in a Southwesterly direction along said 30 foot line, a distance of 176.13 feet; thence 97 degrees 00 minutes right in a Northwesterly direction a distance of 271.27 feet to the Point of Beginning; being situated in Jefferson County, Alabama. Source of Title: Deed Book 200702 Page 3042

Parcel 2:

A parcel of land located in the Southeast Quarter of the Northwest Quarter of Section 34, Township 18 South, Range 2 West, more particularly described as follows :

Commence at the Northwest corner of said Quarter-Quarter section; thence in a Southerly direction along the Westerly line of said Quarter-Quarter section, a distance of 324.17 feet; thence 53 degrees 36 minutes 24 seconds left, in a Southeasterly direction a distance of 413.25 feet to the Point of Beginning; thence continue along last described course, a distance of 138.10 feet; thence 42 degrees 44 minutes 54 seconds right, in a Southeasterly direction, a distance of 271.27 feet to a point 30 feet Northerly from the center line of the existing Acton Place; thence 83 degrees 00 minutes right, in a Southwesterly direction along said 30 foot line, a distance of 14.53 feet; thence 1 degree **11** minutes 24 seconds right, in a Southwesterly direction along said 30 foot line, a distance of 154.89 feet; thence 106 degrees 39 minutes 36 seconds right, in a Northerly direction, a distance of 397.24 feet to the Point of Beginning; situated in Jefferson County, Alabama. Source of Title: Deed Book 3998 Page 606.

APPROVED and ADOPTED this the 28th day of March, 2016.

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 # 2649 is a true and correct copy of such Ordinance that was duly adopted by the City Council of the City of Vestavia Hills on the 28th day of March, 2016 as same appears in the official records of said City.

Posted at Vestavia Hills City Hall, Vestavia Hills Library in the Forest, New Merkle House and Vestavia Hills Recreational Center this the _____ day of _____, 2016.

Rebecca Leavings
City Clerk



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

Date: **FEBRUARY 11, 2016**

- **CASE: P-0216-05**
- **REQUESTED ACTION:** Rezoning Jefferson County Agricultural to Vestavia Hills A-Agriculture
- **ADDRESS/LOCATION:** 2834 & 2838 Acton Pl.
- **APPLICANT/OWNER:** Gail M. Acton
- **GENERAL DISCUSSION:** Property was annexed overnight by City Council on 4/6/92 with the passage of Ordinance 1281 but never rezoned to City zoning. Applicant is requesting the compatible rezoning.
- **STAFF REVIEW AND RECOMMENDATION:**

1. **City Planner Review:** I have looked at all of the relevant zoning / subdivision requirements related to this proposal, including application, notification, setbacks, area of lot development, etc. Notification has been sent to property owners pursuant to Alabama law. I have reviewed this request and find it does meet the minimum requirements of the proposed zoning.

City Planner Recommendation: No recommendation

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

MOTION Mr. Gilchrist made a motion to recommend rezoning approval of 2834 & 2838 Acton Pl. from Jefferson County Agricultural to Vestavia Hills A-Agriculture For The Purpose Of Annexation. Second was by Mr. Visintainer. Motion was carried on a roll call; vote as follows:

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

Mr. Burrell – yes
Mr. Sharp – yes
Mr. Visintainer – yes

Mr. Brooks – yes
Motion carried.

Mr. Larson – yes

2834 & 2838 Acton PL.

Rezone from JC A to VH A

Gail M. Acton JC A

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 is 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: Gail M. Acton

ADDRESS: 2834 Acton Place Vestavia Hills AL 35243

MAILING ADDRESS (if different from above) same

PHONE NUMBER: Home 205-967-0007 Office 205-229-2530

NAME OF REPRESENTING ATTORNEY OR OTHER AGENT:

Doug Acton

P0216-05//28-34-2-18.001&28-34-2-18

2834 & 2838 Acton PL.
Rezoned from JC A to VH A
Gail M. Acton JC A

P&Z Application
Ordinance 2629
Exhibit Page 4

III. ACTION REQUESTED

Request that the above described property be zoned/rezoned

From: Jefferson County Agriculture

To: Vestavia Hills Agric

For the intended purpose of: construction of new home & compatible zoning of existing home

(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.)

2834 & 2838 Acton Road

Property size: _____ feet X _____ feet. Acres: 1.7 +/- 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.

Gail M. Acton 12/23/15
Owner Signature/Date

[Signature]
Representing Agent (if any)/date

Given under my hand and seal
this 23rd day of December, 2015.

Maria B Shepard
Notary Public

My commission expires 05/07/2014
day of May, 2016.
5th



RESOLUTION NUMBER 4810

**A RESOLUTION APPROVING FUNDING AND PURCHASING FOR
TWO VEHICLES FOR THE POLICE DEPARTMENT**

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

1. The City Manager is hereby authorized to purchase two vehicles needed for the Police Department as detailed in the memorandum from the Police Chief dated March 10, 2016; and
2. Funding for the two vehicles will be attained from the Defensive Driving School Fund; and
3. This Resolution Number 4810 shall become effective immediately upon adoption and approval.

ADOPTED and APPROVED this the 28th day of March, 2016.

Alberto C. Zaragoza, Jr.
Mayor

ATTESTED BY:

Rebecca Leavings
City Clerk

VESTAVIA HILLS POLICE DEPARTMENT

To: Jeff Downes

MEMO

From: Chief Rary

Date: 9 March 2016

CC: Becky Leavings

Re: Purchase Vehicles

I request to purchase two (2) vehicles for the Police Department. These vehicles will be unmarked small cars to be used in undercover investigations.

I am requesting to use DDS funds not to exceed \$35,000.00 for this purchase. I have spoken with George Sawaya and we have the funds in this account.

Both vehicles will be purchased off the State of Alabama Bid List.

Thank you.